

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Statesboro Division

IN RE:	)	Chapter 13 Case
	)	Number <u>01-60191</u>
SCOTT WHORLEY	)	
NATALIE J. WHORLEY	)	
	)	
Debtors	)	
_____	)	
	)	FILED
SCOTT WHORLEY	)	at 2 O'clock & 21 min. P.M.
NATALIE J. WHORLEY	)	Date: 7-12-01
	)	
Movants	)	
	)	
V.	)	
	)	
STATE OF GEORGIA, DEPARTMENT OF	)	
HUMAN RESOURCES, CHILD SUPPORT	)	
ENFORCEMENT,	)	
	)	
Respondent	)	

**ORDER**

By motion, Scott Whorley ("Debtor") seeks an order requiring that the State of Georgia Department of Human Resources, Child Support Enforcement ("CSE") reinstate his driver's license. Because the Bankruptcy Code does not provide for the remedy sought by the Debtor, the Debtor's motion is denied<sup>1</sup>.

---

<sup>1</sup>I do not reach the issue of sovereign immunity raised by CSE as such is not necessary to the resolution of the case.

The facts are as follows. The Debtor's driver's license was revoked in August 1997 for non-payment of child support. On February 6, 2001, the Debtor filed a Chapter 13 case. CSE filed a proof of claim for prepetition child support arrearage of \$7,100.00. CSE has agreed to reinstate the Debtor's license upon confirmation of the Chapter 13 plan.

The Debtor argues that since CSE has filed a proof of claim in his case and he has made some payments on the plan to the trustee, he is in compliance with the State court child support order as defined in O.C.G.A. §40-5-54.1(a)(2).<sup>2</sup> The Debtor requests an order directing Georgia to reinstate his driver's license. The Debtor does not contend that he was in compliance with O.C.G.A. §40-5-54.1(a) prepetition but that his bankruptcy filing brought him in compliance. The Debtor is incorrect. Under a plain reading of O.C.G.A. §40-5-54.1(a) until confirmation of the debtor's plan there is no order and therefore no compliance.

The Debtor failed to provide any authority in the

---

<sup>2</sup>O.C.G.A. §40-5-54.1(a) states in pertinent part:

(2) "Compliance with an order for child support" means, as set forth in a court order, administrative order, or contempt order for child support, the obligor is not more than 60 calendar days in arrears in making payments in full for current support, periodic payments on a support arrearage, or periodic payments on a reimbursement for public assistance.

(3) "Proof of compliance" means the notice of release issued by the agency or court of competent jurisdiction stating that the delinquent obligor is in compliance with an order for child support.

Bankruptcy Code which permits me to direct Georgia to return the license. I conclude that there is no such provision.

Most of the cases addressing whether the Bankruptcy Code authorizes a bankruptcy judge to direct a state to lift a suspension of a debtor's driving license find against reinstatement. In re Geiger, 143 B.R. 30 (E.D. Pa. 1992) aff'd 993 F.2d 224 (3d Cir. 1993); In re Raphael, 238 B.R. 69 (D. N.J. 1999); In re Burkhardt, 220 B.R. 837 (D. N.J. 1998); Kimsey v. Suskie (In re Kimsey), 2001 WL 661293 (Bankr. E.D. Ark. 2001). But see In re Brown, 244 B.R. 62 (Bankr. D. N.J. 2000) (holding §525 gives power to reinstate license when plan provides for payment of the dischargeable debt). These cases arise where a violation of the automatic stay is alleged contending that the failure to reinstate the license is an exercise of control over property of the estate in violation of §362(a)(3). The court in Raphael held that where a valid suspension occurred prepetition and the government has taken no actions post-petition to force payment of the debt there is no violation of the automatic stay by the continued suspension. 238 B.R. at 78 . In Geiger, the court held that a driver's license is a privilege, not property of the estate under §541 and therefore is not protected by §362. 143 B.R. at 36. The court reasoned that unlike a commercial license a driver's license is "not transferrable, does not have a tangible pecuniary or marketable value, and is incapable of financial

quantification.” Geiger, 143 B.R. at 36.

While state law is determinative of property rights, the bankruptcy court must decide what is property of the bankruptcy estate. In re Kreuger, 193 F.3d 733, 737 (7<sup>th</sup> Cir. 1999). In Georgia, a driver’s license is a privilege that may be revoked for cause. Nolen v. State, 463 S.E.2d 504 (Ga. App. 1995). The license grants the privilege to operate a vehicle on the public highways. See O.C.G.A. §§40-1-1, 40-5-1(17). Under §541<sup>3</sup>, property of the estate includes any legal or equitable interest in property held by the debtor at filing. Since a Georgia driver’s license is a nontransferable personal privilege, it is not property of the estate and therefore, it is not protected by §362. Bankruptcy Code 362 does not provide a remedy for the Debtor.

Debtor’s further reliance on 11 U.S.C. §525, wherein a governmental unit is prohibited from discriminating against a debtor solely for reason of filing a bankruptcy, is misplaced. Section 525 is inapplicable to the facts of this case. CSE did not suspend nor does it refuse to reinstate the Debtor’s license because of his

---

<sup>3</sup>11 U.S.C. §541 states in pertinent part:

- a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:  
(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in *property* as of the commencement of the case. (Emphasis added).

bankruptcy filing, insolvency, or failure to pay a dischargeable debt. CSE suspended the Debtor's license more than three years before the filing of the bankruptcy case and agrees to reinstate his license if and when the Debtor's plan is confirmed.

In Brown, the court utilized §525 to reinstate the license of a debtor that was suspended for not paying a traffic fine which was provided for by the plan. 244 B.R. at 67. Crucial to the court's conclusion was the fact that the debt was dischargeable. The court pointed out that "there has been no contention that the debts in question are not dischargeable under Chapter 13." Brown, 244 B.R. at 67. The court reasoned that the city could not refuse to renew the debtor's license as such refusal was based on the failure to pay a dischargeable debt which is prohibited under §525. Brown, 244 B.R. at 66.

Assuming in this case only that §525 does allow for the reinstatement of a driver's license which was suspended based upon the nonpayment of a dischargeable debt, the facts of this case are distinguishable in that this debt is non-dischargeable under 11 U.S.C. §1328(a)(2) and §523(a)(5)(A)<sup>4</sup>. CSE suspended the license

---

<sup>4</sup> 11 U.S.C. §1328 states in pertinent part:

(a) As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court

pre-petition not because of the Debtor's bankruptcy filing. CSE has not tried to coerce payment ahead of any other creditors and has agreed to renew the license upon plan confirmation. Bankruptcy Code §525 does not provide the authority to compel the reinstatement of the driver's license.

It is therefore, ORDERED that the Debtor's motion to

---

shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt -

. . .

(2) of the kind specified in paragraph (5). .  
. of section 523(a) of this title; . . .

11 U.S.C. §523 states in pertinent part:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt- . . .

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that--

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State).

compel reinstatement of his driver's license is DENIED.

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 12th Day of July, 2001.