

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
LUTHER B. BECKETT, SR.)
)
 Debtor)
)
)
EARLENE BECKETT)
)
 Movant)
)
v.)
)
LUTHER B. BECKETT, SR.)
)
 Respondent)

Chapter 13 Case

Number 98-42579

FILED
at 3 O'clock & 30 min. P.M
Date 2/1/99
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

ORDER ON MOTION FOR RECONSIDERATION
OR MOTION FOR RELIEF FROM STAY

On October 27, 1998, this Court entered an Order granting relief from the automatic stay to permit the Debtor's ex-spouse to continue the prosecution of a contempt proceeding which was pending in the Superior Court of Chatham County, Georgia, when Debtor's case was filed. That same day, Debtor filed a Motion for Reconsideration alleging that the Court was not fully apprised of all of the facts surrounding the Superior Court rulings in the pending contempt action. On December 16, 1998, a hearing on the

Motion to Reconsider was held and Debtor's counsel proffered the testimony of Debtor's domestic relations counsel in an effort to show that certain representations concerning the status of the parties' domestic relations proceedings were either misrepresented to this Court or were not clearly presented at the earlier hearing. Ms. Beckett's counsel objected to the proffer.

This Court ruled that it was not appropriate, on a motion to reconsider, to permit the parties to relitigate a matter that they failed to litigate adequately at the first hearing, but was appropriate only to establish grounds for relief under Rule 60. This Court further ruled that it would not entertain the Motion to Reconsider unless the Debtor provided a transcript of the earlier proceeding and demonstrated that grounds for relief under Rule 60 exist. Debtor provided the transcript and filed it with this Court on January 6, 1999.

Review of the transcript from the October 20 hearing reveals that the bases on which this Court decided to grant stay relief were uncontradicted or undisputed in the record. They are as follows:

- 1) The Debtor and his ex-spouse had recently been before the Superior Court of Chatham County, Georgia, when this Chapter 13 case was filed on August 27,

1998. In that state court proceeding, the ex-spouse sought to have the Debtor held in contempt for failure to pay the sum of \$800.00 per month under a support order of the Superior Court. The parties do not dispute that between 1996, when the Debtor emerged from a previous Chapter 13 case, and the August 1998 hearing in Superior Court, the Debtor had accrued an arrearage of approximately \$17,000.00 in these support obligations, having tendered to the ex-spouse no more than \$1,500.00. It was further undisputed that just prior to Debtor's case being filed, the Superior Court entered an order holding Debtor to be in willful contempt of the support order, but allowing Debtor to purge himself by the payment of half of the arrearage, or \$8,850.00, *instanter* and to cure the balance at a rate of \$200.00 per month. Rather than tendering any of the payments, Debtor responded by filing this Chapter 13 case, which proposes to pay this obligation in full over a period of five years.

Debtor's counsel concedes that Debtor's ex-wife would not receive, under the plan, either (a) the \$8,850.00 *instanter*, or (b) the approximate 43 month payout under the terms of the Superior Court order, but instead would be forced to accept payment of the full arrearage over 60 months.

- 2) It was uncontradicted that at the time of filing, Debtor owned a one-half undivided

interest in the parties' marital residence with his ex-spouse, yet that asset was not revealed by the Debtor to his counsel and was not revealed in the Debtor's schedules, filed with this Court under oath.

- 3) It was further undisputed that at some time between 1996 and 1998, while Debtor was accruing the substantial arrearages which he owes his ex-spouse, he retired, liquidated his IRA plan, and received approximately \$60,000.00 in cash. It is clear that Debtor's ex-spouse was not granted an *in rem* interest in those funds by the terms of any decree to which this Court was cited; nevertheless, Debtor clearly had the wherewithal to pay off, in its entirety, any arrearage which he owed the wife at the time he liquidated this account. He admits that the total amount he tendered her during the two year period amounted to approximately \$1,500.00.

Based on that evidence, this Court ruled orally on October 20 that:

- 1) Under the Eleventh Circuit Carver decision, abstention by this Court from the on-going state court domestic struggle was appropriate.

- 2) Alternatively, that "cause" existed to grant relief from stay in

light of Debtor's failure to schedule his home as an asset, failure to pay his support arrearages out of the IRA proceeds, and his proposal to alter the terms of the Superior Court contempt purge order.

On December 16, 1998, I advised the parties that if Debtor agreed to provide the transcript of the earlier hearing, this matter would be set for an evidentiary hearing to determine whether the previous order should be reconsidered. Having now reviewed the transcript of October 20, I entertain serious doubts as to whether reconsideration of that order is a likely prospect. The teaching of Carver is that bankruptcy courts should abstain in appropriate circumstances from relitigating issues that are the special province of the state courts in the area of domestic relations.

In this case, Debtor and his ex-spouse have been engaged over a period of years in substantial litigation over domestic relations obligations. In that time, Debtor has failed, without any defensible justification or excuse, to pay virtually anything to his ex-spouse despite his liquidating a \$60,000.00 asset which could have easily remedied his arrearage. The ex-spouse then filed a proceeding in the Superior Court to have Debtor held in contempt; that Court in fact held him to be in contempt, subject to his limited right to purge the citation. Debtor's response was to file a Chapter 13 case and attempt to spread that repayment term beyond what was contemplated by the Superior Court. These

circumstances could hardly be a clearer example of a debtor attempting to bring the powers of the bankruptcy process to bear to thwart an ex-spouse's rights under a domestic relations decree. For this Court to permit the same would be contrary to the teachings of the Carver decision, that bankruptcy should not become "a weapon in an on-going battle between former spouses . . . or [] a shield to avoid family obligations." In re Carver, 954 F.2d 1573, 1579 (11th Cir. 1992).

In the interest of judicial economy, to prevent the parties from unnecessarily incurring legal expenses in dragging out the litigation over this issue of reconsideration and because from the transcript of the October 20 hearing it appears that under no circumstance would it be appropriate for me to reconsider that order, I would be prepared to enter an order denying that motion but for the fact that I stated to the parties that I would assign the matter for a hearing. While Debtor's counsel alluded to some potential misrepresentation that would cause the Court to entertain reconsideration, no specific proffer was given of what misrepresentation might have occurred which would alter the outcome of this inquiry. In light of my review of the transcript, it is inappropriate that this matter be delayed, further prejudicing the rights of the ex-spouse in her effort to proceed under Superior Court order, without a more specific proffer of what misrepresentation might have occurred on October 20 which led this Court to enter the order.

I therefore direct that Debtor's counsel file, under oath, a statement showing the legal and factual basis on which Debtor contends that reconsideration warranted under the provisions of Rule 60. If such a showing is not filed within fifteen (15) days from the date of this order then the Motion will be denied without further hearing for the reasons stated in this order. If a *prima facie* case is made, under oath, that there might have been some misrepresentation which would alter the outcome of this hearing, then an evidentiary hearing will be scheduled in order to receive the evidence and allow cross-examination on that point prior to this Court's entering its order.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 25th day of February, 1999.