

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Anthony Gruber

Court of Appeals No. OT-10-003

Appellant

Trial Court No. 06-DR-111A

v.

Christie L. Gruber a/k/a Christie Wright

DECISION AND JUDGMENT

Appellee

Decided: September 8, 2010

* * * * *

Matthew Hutchinson, for appellant.

Matthew N. Fech, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This matter is before the court on appellee's, Christie Wright, "Notice of Bankruptcy Decision." On June 4, 2010, the court issued a stay of these proceedings, finding appellant, Anthony Gruber, commenced a case under Chapter 7 of the United States Bankruptcy Code. Appellee has since advised the court that on July 12, 2010, the Northern District of Ohio, United States Bankruptcy Court determined that the award of attorneys fees, which is the subject

of this appeal, is not a dischargeable debt. As such, appellee asks this court to lift the stay entered in these proceedings, and reinstate this case to its active docket.

{¶ 2} The automatic bankruptcy stay under Section 362, Title 11, U.S. Code terminates automatically at the earliest of when (1) the case is closed; (2) the case is dismissed; or (3) the discharge is granted. A creditor may also seek relief from the automatic stay. The mere finding by the bankruptcy court that a debt is non-dischargeable does not result in a lifting of the automatic stay. One bankruptcy court recently addressed this very issue:

{¶ 3} "Another defense raised by KLS, and adopted by the state court judge in his October 16, 2007 letter, is that the debt in question is nondischargeable in bankruptcy. Both letters suggest that this fact could somehow excuse their collection efforts during the pendency of a Chapter 13 proceeding. It does not. As long as the collection efforts are aimed at property of the estate, or could impact the feasibility of the ongoing Chapter 13 Plan, the automatic stay remains in effect, even if the debt in question is nondischargeable.

{¶ 4} "See *In re Mu'Min*, 374 B.R. at 161 (holding that in a Chapter 13 proceeding 'the automatic stay remains in effect, irrespective of a determination of dischargeability under § 523(a)(8)'); *Matter of Branch*, 175 B.R. 732, 734 (Bankr.D.Neb.1994) (holding that '[w]hen this Chapter 13 case was filed, the automatic stay of 11 U.S.C. § 362(a) prohibited [the creditor] from attempting to collect the nondischargeable student loan balance, except through the Chapter 13

plan or after obtaining relief from the automatic stay or, in the alternative, until awaiting the closing of the case'), and *In re Weatherley*, 169 B.R. 555, 561 (Bankr.E.D.Pa.1994) (holding that § 362(a) 'precludes any post-petition actions by the IRS to collect even nondischargeable pre-petition debts'). *Cf. In re Daniels*, 316 B.R. 342, 354 (Bankr.D.Idaho 2004) (holding that in a Chapter 7 proceeding, prior to the entry of discharge 'even creditors holding non-dischargeable debts are prohibited by the automatic stay from resorting to judicial proceedings to collect'); *In re Kearns*, 168 B.R. 423, 426 (D.Kan.1994) (*holding that in Chapter 7 proceeding, the automatic stay applies to any attempt to collect support obligations, which were nondischargeable, from property of the estate*)."*In re Reynolds* (Bkrtcy D.Kan. Feb. 8, 2008), D.Kan. Bankruptcy No. 05-42395, Adversary No. 07-7117. (Emphasis added.)

{¶ 5} Appellee's motion to lift the stay in these proceedings does not reflect that the Chapter 7 case has been closed, dismissed, or discharged. Nor does it reflect appellee has been granted relief from the automatic stay. See, e.g., *In re Moore* (Bkrtcy.N.D.Ohio Mar. 20, 2009), N.D. Ohio Bankruptcy No. 08-11498, Adversary No. 08-1139 ("a debtor's failure to pay child support and spousal support obligations, which are nondischargeable debts * * * might well constitute cause for granting relief from stay * * *.") Therefore, the court finds the automatic bankruptcy stay under Section 362 remains in effect.

{¶ 6} Appellee's motion to lift the stay of these proceedings is found not well-taken and denied. The clerk is ordered to strike appellee's brief filed September 3, 2010. It is so ordered.

Thomas J. Osowik, P.J.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.
