

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

ARTHUR CHAMBLESS III

Case No. 98-14294-MAM-13

Debtor.

**ORDER DENYING MOTION TO HOLD JULIE GLOVER  
IN CONTEMPT FOR VIOLATION OF THE STAY**

Johnny M. Lane, Mobile, Alabama, Attorney for the Debtor  
Julie Glover, Mobile, Alabama, Attorney

This case is before the Court on the motion of the debtor to hold Julie Glover in contempt for violation of the automatic stay pursuant to 11 U.S.C. § 362(h). The Court has jurisdiction to hear the matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, the Court is denying the motion for violation of the stay.

**FACTS**

Arthur Chambless filed his chapter 13 case on November 25, 1998. In his schedules, he listed a bank account at Regions Bank with a balance of \$100 at filing and claimed it as exempt property. There were no objections to his exemption requests. He confirmed a plan on March 23, 1999. It stated that “[t]itle to the debtor’s property shall revert in the debtor upon confirmation of the plan, unless otherwise provided in this plan.” The order confirming the plan stated “[j]urisdiction is retained during the pendency of this proceeding over the debtor and the debtor’s property, including wages and earnings, wherever located.”

In the year 2000, Chambless and his wife commenced a divorce proceeding and a judgment of divorce was entered by the Circuit Court of Mobile County on September 14, 2001. The judgment obligated Chambless to pay monthly child support of \$833. The decree also stated in several places that Chambless was currently in a chapter 13 case. It also awarded to Chambless' exwife \$1,500 towards her attorneys fees in the divorce.

On October 22, 2001, Julie Glover, attorney for Chambless' former wife, garnished Chambless' wages. Chambless' attorney filed a Motion to Stay and no money was withheld from Chambless' check. On November 8, 2001, Glover garnished Chambless' bank account at Regions Bank. The Bank held his money for three weeks until a court order releasing the garnishment could be obtained. In the meantime, his car loan payment check was returned NSF. He had to pay a \$25 check charge. His power was turned off at his house because he could not pay the bill and it caused his refrigerator to ground out. The repair of the refrigerator cost \$310. He has missed one day of work dealing with this case which has cost him \$228. He was also very stressed by the situation.

#### LAW

The debtor alleges that Glover violated the automatic stay that goes into effect at the filing of every bankruptcy case. 11 U.S.C. § 362(a). When a violation of the stay occurs in an individual debtor's case, the debtor has a cause of action for violation of the stay under 11 U.S.C. § 362(h). It provides that "an individual injured by any willful violation of a stay . . . shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." The debtor bears the burden of proving by a preponderance of the evidence that a creditor has committed a willful violation of the stay. *In re*

*Lamar*, 249 B.R. 822, 825 (Bankr. S.D. Ga. 2000) (“When damages are sought under § 362(h) for violation of the automatic stay, the party seeking damages bears the burden of proof.”).

Glover alleges that she did not violate the stay for several reasons. One, because she was attempting to collect a postpetition debt, not a prepetition one. Second, when she garnished Chambless’ bank account she was garnishing an exempt asset.

Section 362(a)(1) states that the stay applies to “the continuation . . . of a . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . or to recover a claim against the debtor that arose before the commencement of the case.” Clearly, the divorce was not instituted until well after the 1998 bankruptcy filing of Chambless and the judgment in 2001 that established Glover’s claim for \$1,500 was a postpetition claim. Therefore 11 U.S.C. § 362(a)(1) does not apply. Section 362(a)(2) stays “the enforcement, against the debtor or against property of the estate of a judgment obtained before the commencement of the case.” This section also does not apply to a postpetition debt. Section 362(a)(3) stays “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” This section does apply if Chambless’ wages or his checking account are “property of the estate.”

There are two sections of the Bankruptcy Code that address this issue. Section 1306(a)(2) defines “property of the estate” in a chapter 13 case to include “earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title.” Section 1327(b) of the Code states that “except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.” These two sections are in conflict.

Chambless' plan stated that "[t]itle to the debtor's property shall revert in the debtor upon confirmation of the plan, unless otherwise provided in the plan." The confirmation order does not address the issue except to state that "jurisdiction is retained during the pendency of this proceeding over the debtor and the debtor's property, including wages and earnings, wherever located."

Courts have disagreed about how to reconcile the two Code provisions cited above. If earnings are property of the estate until the case is closed, dismissed or converted, then earnings cannot revert in the debtor at confirmation. Conversely, if all of the assets revert in the debtor, they cannot be property of the estate. In this case, debtor's plan makes clear that assets are to revert as allowed in 11 U.S.C. § 1327(b), but the confirmation order gives the Court continuing jurisdiction over wages.

After reading all of the cases on the issue, the Court concludes that the best approach is the one taken in *In re Leavell*, 190 B.R. 536 (Bankr. E.D. Va. 1995) and *Montclair Property Owners Association, Inc. v. Reynard (In re Reynard)*, 250 B.R. 241 (Bankr. E.D. Va. 2000).<sup>1</sup> Those cases state that the chapter 13 estate survives confirmation, at least to the extent of postconfirmation wages. The Court will not restate all of the reasoning of the two cases. That reasoning is incorporated by reference. Because the Court is ruling that Chambless' wages are "property of the estate" for as long as his case is pending, any attempt to garnish those wages is violative of the stay as an act "to obtain possession of property of the estate."

---

<sup>1</sup>This case discusses the conflicting views. The case of *United States Postal Service v. Black (In re Heath)*, 198 B.R. 298 (S.D. Ind. 1996) sets out the four conflicting views very clearly.

Glover garnished the bank account of Chambless and asserts that that asset is not property of the estate. This analysis is flawed. The \$100 in the account at the filing of the bankruptcy case in 1998 was exempt. The account (if it is even the same one) at the time of garnishment in 2001 did not contain the same exempt \$100. What was in the account was postpetition wages. A creditor cannot ignore the fact that, unlike furniture or real estate, a bank account does not remain unchanged. Therefore, the account was subject to the stay because the account contained earnings that were “property of the estate.”

Having decided that the wages and bank account were protected by the stay, the issue is whether Glover’s violation of the stay was “willful.” Willful means “intentional.” *Cuffee v. Atl. Bus. & Community Dev. Corp. (In re Cuffee)*, 901 F.2d 325 (3rd Cir. 1990) (“A willful violation does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant’s actions which violated the stay were intentional.”). It does not necessarily mean that any ill will or bad intent was involved. In this case, the Court cannot find that the violation was willful because of the lack of clarity in the case law, the Code sections, and the plan and order of confirmation. Glover had plausible arguments based upon her reading of the law. Without a finding of willfulness, no damages for the violation of the stay can be assessed.

It is clear that Chambless was damaged, but it would be wrong to punish Glover in this case. She had no way of knowing how this Court would view the law. Of course, it would have been wiser to seek relief from the stay if there was any doubt. In the future, with the issuance of this opinion, the Court will hold creditors accountable for actions such as those taken in this case.

IT IS ORDERED that the motion of the debtor, Arthur Chambless III, for a holding of contempt against Julie Glover is DENIED.

Dated: February 8, 2002

---

MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE