Consumer Bankruptcy Panel, September 2021
Chief Judge Henry Callaway
Career law clerk Jennifer Morgan
United States Bankruptcy Court
Southern District of Alabama

Recent Consumer and Bankruptcy Opinions from the Alabama Bankruptcy and District Courts

Chapter 7

In re Weldy, Case No. 21-10325 (Bankr. S.D. Ala. May 20, 2021) (Callaway, J.)

The court denied the chapter 7 debtor's motion asking the court to value her homestead and determine that there was no equity for creditors. In exercising her responsibilities under the Bankruptcy Code, the trustee was entitled to market the property to see if it could be sold for enough to create a distribution for creditors. The court declined to set a hypothetical value or interfere with the liquidation process.

In re Ellard, Case No. 18-4971 (Bankr. S.D. Ala. Aug. 4, 2020) (Callaway, J.)

Chapter 7 debtors generally do not have standing to object to claims unless there will be a surplus that will inure to the debtor's benefit or where a claim will not be discharged. In any event, the chapter 7 debtor's objection was premature because the trustee had collected no assets for distribution to creditors. The court thus overruled the debtor's objection to a claim without prejudice.

In re Trapp, 2019 WL 6869630 (Bankr. N.D. Ala. Dec. 16, 2019) (Mitchell, J.)

The court granted a creditor's motion to extend deadline to object to discharge based on the creditor's diligence in investigating the debtors' file, and considering the special circumstances in which the creditor delayed filing a nondischargeability complaint based on the health issues of one of the debtors.

Section 727

In re Jones, 2021 WL 2946107 (Bankr. N.D. Ala. July 13, 2021) (Jessup, J.)

The court denied the debtors a discharge under Bankruptcy Code § 727(a)(4)(A) based on the cumulative nature of various false oaths made by the debtors in connection with their bankruptcy case. These included underreporting their income and inflating their expenses on their original schedules, falsifying their means test, failing to list multiple assets, and failing o disclosure withdrawals from their 401(k) and a credit union account, as well as payments to creditors on their original statement of financial affairs. The court found that the repeated nature of omissions and improper disclosures in the debtors' original schedules and amended schedules was clear evidence of the debtor's fraudulent intent.

In re Kessler, 2021 WL 2429495 (Bankr. N.D. Ala. June 14, 2021) (Mitchell, J.)

The court granted summary judgment to the plaintiffs and denied the debtor a discharge under Bankruptcy Code §§ 727(a)(2) and 727(a)(4)(A). There was no genuine issue of material fact that the debtor transferred or concealed equity in her home to put it out of the reach of the plaintiffs. Likewise, there was no genuine issue of material fact that the debtor acted knowingly and with fraudulent intent in failing to disclose her ownership of certain property and her use of her husband's bank account on her bankruptcy schedules.

Administrative expenses

In re Hall, Case No. 20-20132 (Bankr. S.D. Ala. Dec. 22, 2020) (Callaway, J.)

The former chapter 7 trustee filed an application for administrative expenses after the debtor converted her case to chapter 13. The Bankruptcy Code is unclear on how a chapter 7 trustee should be compensated when a case is converted. The court found it unfair to award either no compensation or compensation based on a percentage of estimated non-exempt assets. However, a chapter 7 trustee in a case converted to chapter 13 is entitled to compensation for reasonable and necessary services which benefited the bankruptcy estate. The court held that it would thus award the former chapter 7 trustee a quantum meruit administrative expense based on a lodestar time and hourly rate basis. The court reset the hearing on the application for administrative expenses to allow the chapter 7 trustee to submit time records.

Lien avoidance

Carden v. Ditech Financial, LLC, 2020 WL 768585 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson, J.)

Although state law precluded issuing a new certificate of title for the debtor's mobile home because of its age, the law did not invalidate security interests properly perfected on an existing certificate of title. The court thus granted the defendant's motion for summary judgment as to the avoidance of its lien under Bankruptcy Code § 544(a).

Rule 3002.1 determination of mortgage fees and expenses

In re Lane, Case No. 19-10828 (Bankr. S.D. Ala. Feb. 10, 2021) (Callaway, J.)

The court denied the debtor's motion to determine postpetition mortgage fees and expenses filed under Bankruptcy Rule 3002.1(e) because it was filed more than one year after the creditor served its notice of postpetition mortgage fees and expenses under Rule 3002.1(c). Even though the creditor did not respond, the rule specifically requires that the motion be filed within one year of service of the Rule 3002.1 notice and does not state that the one-year limitation applies only if raised by the creditor.

In re Fletcher, Case No. 19-01154 (Bankr. N.D. Ala. July 20, 2020) (Mitchell, J.)

The court denied the debtor's motion to determine under Rule 3002.1(e) because the mortgage did not provide in clear and unambiguous language that the fees could be collected from the debtor.

Schedules

In re Allen, Case No. 19-12304 (Bankr. S.D. Ala. Jan. 14, 2021) (Callaway, J.)

The chapter 13 trustee moved to reopen a dismissed and closed case in order to administer a products liability suit settlement. The debtor had never listed the claim in his schedules, so the trustee did not know about it when he moved to dismiss. The court granted the motion to reopen in large part because the debtor had not revealed the claim.

Dismissal of chapter 13 case by debtor

In re Price, 2021 WL 2939867 (Bankr. N.D. Ala. July 12, 2021) (Robinson, J.)

The co-debtor wife received a settlement of a TVM mesh claim. She then moved to dismiss herself from the chapter 13 case with her husband. The court granted the dismissal, but exercised its discretion under Bankruptcy Code § 349(b)(3) to limit the re-vesting of property in the debtor post-dismissal. The court held that the mesh lawsuit proceeds would remain property of the bankruptcy estate to be paid to the trustee once the settlement was approved.

Vesting of property/debtor's retention of assets in chapter 13

In re Perine, Case No. 16-4446 (Bankr. S.D. Ala. June 28, 2021) (Callaway, J.)

Where the insurance proceeds for a wrecked vehicle were less than the total of the secured claim and the amount that the debtor could exempt, the court ordered that the net insurance funds be paid to the debtor after paying the small balance left on the secured claim. The value of the vehicle and associated proceeds had already been factored into calculating plan payments, and the plan met the liquidation analysis of Code § 1325(a)(4) both at confirmation and at the time of the insurance settlement. The insurance proceeds did not represent new assets or value coming into the estate that had not already been accounted for in the liquidation analysis.

In re Elmore, Case No. 20-20229 (Bankr. S.D. Ala. Dec. 30, 2020) (Callaway, J.)

The chapter 13 trustee filed a motion for turnover of nonexempt funds in debtors' bank accounts. Possession of estate property under Code § 1306(b) and vesting of rights in property under § 1327(b) are different concepts. The required plan form in this district addresses vesting but not possession and does not affect a debtor's right of possession under § 1306(b). The debtors therefore are entitled to possession of the funds under § 1306(b), although under the plan the property remains vested in the bankruptcy estate until discharge or dismissal. The plan provision on unliquidated claims did not apply to the bank funds. The court thus denied the trustee's motion for turnover.

Disposable income

In re Kapua, 2020 WL 7345740 (Bankr. S.D. Ala. Dec. 14, 2020) (Oldshue, J.)

The court allowed an above-median income debtor to deduct from disposable income the contractual payment amount necessary to retain a 2019 Toyota Camry even though it exceeded the IRS Standard. The court found, consistent with *In re Green* (Case No. 17-01993 (Callaway, J.)), that Bankruptcy Code § 707(b)(2)(A)(iii) allows an above-median debtor to deduct amounts contractually due to secured creditors during the term of the 60-month plan to maintain possession of a primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents – regardless of whether the payment exceeds the IRS Standard. The court overruled the trustee's objection to confirmation because it found that retention of the Camry, the debtor's sole vehicle, was necessary for the debtor's support, the Camry was not a luxury item, and the trustee had not alleged bad faith or other basis to deny confirmation.

Chapter 13 confirmation

In re Hickey, 618 B.R. 314 (Bankr. N.D. Ala. 2020) (Mitchell, J.)

No special circumstances existed of kind sufficient to warrant entry of order confirming direct payment plan under which chapter 13 debtor would make payments on secured motor vehicle loan outside the plan. The court thus sustained the chapter 13 trustee's objection to confirmation.

In re Wilson, 2021 WL 2447304 (Bankr. N.D. Ala. June 15, 2021) (Robinson, J.)

The court denied confirmation of a chapter 13 plan of homeowners who defaulted on their short-term mortgage that proposed to resume contractual payments, including a final balloon payment. The court found that Bankruptcy Code § 1325 required the entire debt, including the balloon payment, be paid in equal installments through the plan.

Bad faith in chapter 13

In re Holifield, Case No. 20-12097 (Bankr. S.D. Ala. Dec. 11, 2020) (Callaway, J.)

The court sustained objections to confirmation of a chapter 13 plan under Bankruptcy Code § 1325(b)(1) and based on bad faith. The debtor testified that his girlfriend and 22-year old daughter shared his second vehicle. However, the debtor did not list any dependents on his sworn schedules, so the court found that the cost of the second vehicle was not reasonably necessary for the maintenance and support of a dependent. The court also found that the cost of the second expensive vehicle was not reasonably necessary for the debtor's food truck business. Finally, the court found that the debtor had failed to meet his burden to show that the plan was proposed in good faith in proposing to retain two relatively expensive, "upside-down" vehicles which would cost more than $52,000 over the life of the plan.

In re Major, Case No. 20-11723 (Bankr. S.D. Ala. Nov. 23, 2020) (Callaway, J.)

The court overruled a creditor's objection to confirmation of a chapter 13 plan based on bad faith. The creditor focused on only one of the *Kitchens* factors – dealings with creditors – and the evidence on whether the debtor had lied to the creditor about owning a shed which she put up as collateral was not clear cut. After review of the other relevant *Kitchens* factors, the court found that denial of confirmation for bad faith was unwarranted.

In re Lassiter, Case No. 19-12705 (Bankr. S.D. Ala. Aug. 6, 2020) (Oldshue, J.)

The court overruled a creditor's objection to chapter 13 confirmation because the creditor failed to present sufficient evidence that the debtor filed the bankruptcy in bad faith under the *Kitchens* factors. The debtor agreed to increase plan payments to account for his retention of nonessential property and satisfactorily explained the status of the creditor's collateral.

In re Jones, Case No. 20-10704 (Bankr. S.D. Ala. June 16, 2020) (Callaway, J.)

The court denied confirmation of a chapter 13 plan that proposed to retain and pay for a vehicle driven by the debtor's 31-year old son. Although the son promised to contribute to his mother's plan payments, the court found that the plan was not proposed in good faith because it exposed the debtor and creditors to unnecessary risks and expenses unrelated to the debtor's rehabilitation.

In re Powe, 2020 WL 6065178 (Bankr. S.D. Ala. May 1, 2020) (Callaway, J.)

The trustee objected to the debtor's chapter 13 plan for lack of good faith because the plan was essentially a "fee-only" or "fee-centric" chapter 13. The court found that it was not bad faith for the debtor to file the chapter 13 case based on her attorney's preference to be paid postpetition through a chapter 13 plan rather than directly. After reviewing recent fees charged for chapter 7 cases, the court overruled the trustee's objection to confirmation with the condition that the attorney's fees in the chapter 13 case were limited to $1,500.

In re Turner, Case No. 19-11330 (Bankr. S.D. Ala. Aug. 1, 2019) (Callaway, J.)

After analyzing the *Kitchens* factors, the court found that the debtor's chapter 13 plan proposing to pay for two vehicles through the plan was not filed in good faith. The debtor was a home health care RN and proved the need for her Jeep Wrangler for work, which required her to travel on dirt roads and sometimes off road. But the debtor also proposed to retain a relatively late-model BMW which she drove for personal use. Although the percentage to unsecured creditors had not yet been determined, the debtor had sizeable tax debt and it did not appear that much, if anything, would be paid on unsecured claims. The debtor's desire to keep the BMW for personal use was not enough under those circumstances to override the interest of unsecured creditors.

Claims in a chapter 13 case

In re Bozeman, 616 B.R. 407 (Bankr. M.D. Ala. 2020) (Sawyer, J.) (affirmed by the district court and currently on appeal to the Eleventh Circuit)

Mortgagee that erroneously assumed that the debtor's chapter 13 plan was a cure-and-maintain plan, rather than a full payment plan, filed a proof of claim for prepetition arrearage only. After the mortgagee received a notice of completion of plan payments, the mortgagee tried to amend its proof of claim to assert a much larger claim. The debtor objected and the court sustained the objection and held that the debtor was entitled to be discharged of the mortgage debt upon completion of the plan payments. The mortgagee, having failed to read or object to the plan prior to confirmation, was bound by the confirmed plan.

In re Wall, 2020 WL 6065767 (Bankr. S.D. Ala. Aug. 8, 2020) (Callaway, J.)

The court found it appropriate to estimate a creditor's unliquidated business tort claim under Code § 502(c) because it would take years to get to trial by jury in district court and the debtor's chapter 13 case could not move forward to confirmation in the meantime. The court multiplied the plaintiff's probability of success by the estimated damages to value the claim.

In re Diamond, Case No. 19-14161 (Bankr. S.D. Ala. June 9, 2020) (Callaway, J.)

The trustee objected to a claim based on an Alabama state court judgment that was more than ten years old and had not been revived. The court found that the creditor overcame the presumption of satisfaction under Alabama Code § 6-9-191 because the debtor's sworn schedules did not dispute the claim and showed that the judgment had not been satisfied. The creditor thus still had a "claim" under the broad definition in 11 U.S.C. § 105 because the creditor's right to payment is not extinguished under Alabama law until twenty years after entry of the judgment.

In re Ward, Case No. 19-13537 (Bankr. S.D. Ala. Apr. 2, 2020) (Callaway, J.)

Rule 3001(c), while eliminating the requirement to attach the underlying credit card agreement, does not eliminate the requirement of Rule 3001(d) that the creditor provide evidence of perfection if claiming a security interest in property of the debtor. Because the credit card company did not attach documentation that its alleged security interest had been either created or perfected, the court sustained the debtor's objection and reclassified the claim as unsecured.

In re Smith, Case No. 19-12463 (Bankr. S.D. Ala. Dec. 30, 2019) (Callaway, J.)

A description of collateral in a security agreement is sufficient if it reasonably identifies what is described, even though it is not specific. The court found that the description of "purchased goods" on sales slips, coupled with itemized receipts issued at the same time, was sufficient. The underlying debt was a credit card account, so Rule 3001(c)(3) applied, not Rule 3001(c)(1). Because the creditor attached the required Rule 3001(c)(3) information to its proof of claim, the claim was entitled to prima facie validity without additional documentation.

In re Pettway, Case No. 19-12599 (Bankr. S.D. Ala. Dec. 23, 2019) (Callaway, J.)

Federal Rule of Bankruptcy Procedure 3001(c)(1), when read in light of Rule 3001(e), does not require a prepetition transferee of a debt to include with the proof of claim evidence of the assignment if no prior proof of claim has been filed. The court thus found that the creditor complied with the rules by attaching the writing evidencing the underlying car deficiency balance, even though it did not attach evidence of assignment of the debt.

Late-filed claims

In re Baum, Case No. 19-11083 (Bankr. M.D. Ala. Jan. 13, 2021) (Creswell, J.)

The debtor objected to the creditor's claim before confirmation. The court sustained the objection and disallowed the claim but granted the creditor's request for 90 days leave to file a deficiency claim. The court then confirmed the plan. Before expiration of the deadline to file a deficiency claim, the creditor sought and was granted an extension. Seven days after the deadline, the creditor filed an amended claim. The trustee objected to the claim, the creditor did not respond to the objection, and the court sustained the objection. The creditor moved to reconsider and the court vacated the order and allowed the parties to brief the issues. The court ultimately disallowed the deficiency claim, however, stating that it must insist on finality at some point and adding that creditor knew how to seek timely extensions of the deadline as it had done so previously.

In re Dorminey, Case No. 16-10767 (Bankr. M.D. Ala. Aug. 17, 2020) (Creswell, J.)

Before confirmation, the court granted stay relief to the creditor who sold its collateral, a vehicle. Approximately a month later, with no amendments to its claim or objection to confirmation from the creditor, the court confirmed the debtor's plan. Three years later, the creditor filed a deficiency claim. The trustee objected to the claim and the court sustained the objection. The court found that such a late claim was an indication of negligence with no excuse of justification and disallowed the claim.

In re Axtell, Case No. 19-12064 (Bankr. M.D. Ala. July 27, 2020) (Creswell, J.)

A creditor timely filed two proofs of claims in the debtor's case. After the bar date, the creditor filed one more claim and the debtor objected to the late-filed claim. The court sustained the objection and disallowed the claim as untimely. The creditor then filed another claim stating that it was not a mere amendment of the previously disallowed claim and that the court should allow the claim as a "new theory of recovery" based on the cross-collateralization language in the note supporting the claim. The court found that, because the creditor had timely filed two proofs of claims and did not object to confirmation, the late claim was more akin to an "end around" to the court's prior order disallowing the claim. The court thus disallowed the second late claim.

Chapter 13 confirmation

In re Harris, Case No. 19-11203 and In re Murrill, Case No. 19-11212 (Bankr. S.D. Ala. July 11, 2019) (Callaway, J.)

Creditor objected to chapter 13 plan because prepetition arrearage in creditor's proof of claim was greater than the amount listed in the debtor's plan. The court overruled the objection as unnecessary based on the language of the plan that stated that the arrearage amount on the proof of claim governs over any contrary amount in the plan. The court also prohibited the creditor from charging the debtor the attorney's fees and costs incurred in connection with the unnecessary objection.

Settlement of prepetition claims

In re Merry, 2019 WL 7041862 (Bankr. M.D. Ala. Dec. 20, 2019) (Sawyer, J.)

The bankruptcy court sustained the chapter 13 trustee's objection to the settlement of the debtor's prepetition claims for damages caused by an automobile accident. The court found no reason to allow the holder of an unsecured claim arising out of the accident – a chiropractor – to be paid in full while the debtor's other unsecured creditors received nothing through his plan.

910 claims

In re Butler, 609 B.R. 895 (Bankr. M.D. Ala. Dec. 2019) (Sawyer, J.)

A vehicle is not "acquired for the personal use of the debtor" as required for 910 treatment if the vehicle was acquired for the use of another party. The bankruptcy court held that a vehicle that the debtor bought less than 910 days prepetition so that his girlfriend who was not a member of the debtor's household could have means of transportation was not subject to the antimodification provision of § 1325. Thus, the debtor could modify or cramdown the secured claim of the vehicle lender.

DSO

In re Toche, 620 B.R. 671 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

Debtor's divorce decree required him to pay half his monthly pension to his ex-wife. State courts have concurrent jurisdiction with bankruptcy courts to determine whether a debt is non-dischargeable as alimony, maintenance, or support under 11 U.S.C. §523(a)(5). It was not clear from the divorce decree whether the pension obligation was DSO or a property settlement, so the court granted limited relief from the automatic stay to obtain a ruling from the state court.

In re Lane, Case No. 19-13490 (Bankr. S.D. Ala. May 11, 2020) (Callaway, J.)

Even though the debtor was not current on postpetition DSO, the court overruled the trustee's objection to confirmation of the debtor's chapter 13 plan based on 11 U.S.C. § 1328(a)

because the DSO creditor had expressly consented to the inclusion of the debtor's postpetition preconfirmation DSO in the plan. However, the court conditioned its ruling on the plan payments being increased to the amount necessary for the unsecured creditors to receive what they would have received had the postpetition preconfirmation DSO not been included in the plan.

Tabb v. Lambert, 2019 WL 7667626 (Bankr. S.D. Ala. Aug. 27, 2019) (Callaway, J.)

A new non-DSO obligation created by a divorce degree is not dischargeable in chapter 7 under 11 U.S.C. § 523(a)(15), although it is in chapter 13. The chapter 7 debtor's obligation under a divorce decree to refinance her ex-husband's student loan was thus not dischargeable.

Title pawns

In re Deakle, 617 B.R. 709 (Bankr. S.D. Ala. 2020) (Callaway, J.) (currently on appeal to the Eleventh Circuit)

A title pawn lender's failure to object to a chapter 13 plan constituted waiver of the vehicle's forfeiture under the Alabama Pawnshop Act, even though the redemption period expired prepetition. The lender was thus bound by the terms of the confirmed plan.

*** The district court affirmed and adopted Judge Callaway's opinion in TitleMax of Alabama, Inc. v. Deakle, Case No. 1:20-cv-00335-JB-N (S.D. Ala. Mar. 31, 2021)

In re Womack, 616 B.R. 420 (Bankr. M.D. Ala. 2020) (Sawyer, J.) (affirmed by district court and currently on appeal to the Eleventh Circuit)

When the debtor filed bankruptcy before the maturation date of her pawn contract, she had an ownership interest in her pawned vehicle, the lender was a lienholder, and the pawn contract could be modified under § 1322(b).

In re Cottingham, 618 B.R. 555 (Bankr. N.D. Ala. 2020) (Robinson, J.)

Pawnbroker waived its rights to assert ownership of vehicle that chapter 13 debtor pawned prepetition by failing to object to confirmation or to object to the claims filed on its behalf before confirmation, and accepting plan payments for the claim after confirmation.

In re Eldridge, 615 B.R. 657 (Bankr. S.D. Ala. 2020) (Callaway, J.) (currently on appeal to the Eleventh Circuit)

A pawnbroker is not prohibited from waiving the forfeiture provision of Alabama Code § 5-19A-6. Thus, a pawnbroker could elect to enter into a new pawn transaction with a debtor who had pawned title to his vehicle even though the debtor did not redeem the title by the pawn's maturity date or within the 30-day statutory grace period under Alabama law.

*** On appeal, the district court affirmed and adopted Judge Callaway's opinion in Eldridge v. Title Max of Alabama, Inc., Case No. 1:20-cv-00133-JB-B (S.D. Ala. Mar. 31, 2021)

In re Thompson, 609 B.R. 443 (Bankr. M.D. Ala. 2019) (Creswell, J.)

When a chapter 13 debtor enters into a prepetition pawn transaction and then defaults, and the redemption period expires prepetition, the pawned property does not become property of the estate.

In re Tesseneer, Case No. 19-11283 (Bankr. S.D. Ala. Oct. 2, 2019) (Callaway, J.)

The court sustained a pawnbroker's objection to confirmation of a chapter 13 plan that proposed to redeem the debtor's car title through the plan. The loan was in its first thirty days and the title pawn had not matured before the debtor filed bankruptcy. However, the court found that the clock keeps ticking under Alabama's Pawnshop Act; the redemption period is not frozen in time by the filing of the bankruptcy and the maturity date is still reached. When the debtor's redemption period lapsed under state law after the extension provided by 11 U.S.C. § 108, the debtor's car ceased to be property of the estate entirely.

Automatic stay

In re Byers, 621 B.R. 943 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

Debtors entered into a "lease agreement" for an RV which they used as their home. However, the lease did not require the debtors to return the RV at the end of the term, and the title listed the debtors as owners. Although the contract did not meet the "bright-line" test of Alabama Code § 7-1-203, the court found that the arrangement was a disguised security interest under both the "economic realities assessment" and "functional approach" analyses. The court thus denied the creditor's motion for relief from stay since the debtors proposed paying the secured claim through their chapter 13 plan.

Glenn v. Army & Air Force Exchange Services, 616 B.R. 429 (Bankr. S.D. Ala. 2020) (Oldshue, J.)

The court limited an attorney's fee award under 11 U.S.C. § 362(k)(1) because the debtor's attorney made no effort to resolve the automatic stay violation prior to instituting litigation. The court explained that the standards prescribed in 11 U.S.C.§ 330(a)(1)(A) allow reasonable compensation for actual, necessary services. Absent any pre-suit attempt by the attorney to contact the creditor about the stay violation, the court was not convinced that the adversary proceeding was necessary. The court thus reduced the attorney's fee to an amount deemed reasonably necessary under the facts of the case to resolve the matter.

In re Johnson, 615 B.R. 919 (Bankr. N.D. Ala. 2020) (Mitchell, J.)

Chapter 13 debtor brought adversary proceeding asserting that mortgagee violated automatic stay by misappropriating insurance proceeds for commercial real property that was struck by a car. The court held that the debtor had no interest in the insurance proceeds paid to the mortgagee under the terms of the applicable insurance policy and thus granted the mortgagee's motion for summary judgment.

In re Mainous, 610 B.R. 916 (Bankr. S.D. Ala. 2019) (Oldshue, J.)

The court considered the factors set forth in *In re Cummings*, 221 B.R. 814 (Bankr. N.D. Ala. 2006) and balanced the equities in weighing the hardship to the creditor against the potential prejudice to the debtors, the estate, and other creditors in granting a creditor limited relief from stay to pursue claims against the debtors in state or federal courts in the Southern District of Alabama. Considering the totality of the circumstances, granting relief to allow litigation outside of courts in this district would be unduly burdensome to the debtors and harm the viability of the bankruptcy case. The court also estimated the creditor's proof of claim under 11 U.S.C. § 502(c) without prejudice pending the outcome of the litigation between the parties.

In re Lanier, 2019 WL 5833058 (Bankr. N.D. Ala. Oct. 18, 2019) (Robinson, J.)

The court granted a motion for relief from stay filed by the debtor's neighbor to enforce a state court order allowing her to remove a pipe and a fence that were on her property. The neighbor also filed a complaint to determine the dischargeability of her claim against the debtor for trespass. The court denied the neighbor's motion for relief from stay to the extent that it involved issues that would be resolved in the adversary proceeding.

In re Collum, 604 B.R. 61 (Bankr. M.D. Ala. 2019) (Sawyer, J.)

The court found that a creditor that was participating in prepetition setoff program willfully violated the stay by continuing to receive funds on prepetition debt postpetition. But the court limited the attorney's fee award to $150.00 given that the creditor had promptly returned the funds and that the attorney had made no effort to resolve creditor's routine violation of the stay by contacting creditor's counsel, but had increased expenses by immediately involving bankruptcy court.

Turner v. Fidelity Bank, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway, J.)

The court awarded the debtor $750.00 for the bank's violations of the automatic stay in mistakenly sending computer-generated past due notices to the debtor after she filed for bankruptcy. Although the bank's employees did not intend to violate the stay, the bank failed to take appropriate steps once it received notice of the debtor's bankruptcy. The debtor was not responsible for notifying the creditor of the continuing stay violations; however, the court limited the attorney's fee award to $250.00 because it found that one communication from debtor's counsel to the bank's counsel would have remedied the problem.

Approval of settlements

In re Gaddy, 622 B.R. 440 (Bankr. S.D. Ala. 2020) (Callaway, J.)

The court approved the chapter 7 trustee's settlement of a fraudulent transfer case with the debtor and other defendants over the largest creditor's objection. The court performed an extensive analysis of the *Justice Oaks* factors and found that the settlement was fair and reasonable given the circumstances, including defenses that would likely result in the case going

to trial and the uncertainty of what a jury would do. The creditor's argument that the trustee should have conducted more discovery before reaching a settlement did not compel a different result.

*** On appeal, the district court found that the bankruptcy court thoroughly considered each of the *Justice Oaks* factors in concluding that the settlement was reasonable, that the bankruptcy court did not abuse its discretion in approving the settlement, and that the bankruptcy court did not abuse its discretion in denying the largest creditor's request for more discovery. *See* SE Property Holdings, LLC v. Gaddy Electric & Plumbing, LLC, et al., Case No. 1:20-00201-KDN (S.D. Ala. August 20, 2020). The Eleventh Circuit also found that the bankruptcy court did not abuse its discretion in approving a settlement because the settlement did not fall below the lowest point in the range of reasonableness. *See* In re Gaddy, Case No. 20-13549 (11th Cir. April 26, 2021)

Motion to stay pending appeal

In re Gaddy, 2020 WL 6065177 (S.D. Ala. May 7, 2020) (Callaway, J.)

The court denied a creditor's motion to stay pending appeal of the court's order approving the chapter 7 trustee's motion to compromise. The creditor did not meet its burden of showing a substantial likelihood that it would prevail on the merits of the appeal. Even if it had, the creditor did not show that the three remaining factors for stay relief – a substantial risk of irreparable injury to it unless the stay is granted, no substantial harm to other interested persons, and no harm to the public interest – tended strongly in its favor.

Section 523

First Bank of Linden v. Gunter, AP No. 19-80037 (Bankr. N.D. Ala. Feb. 12, 2021) (Jessup, J.)

The court found that the debt owed by the debtor to the creditor bank was dischargeable in the debtor's bankruptcy. Although the bank established that the debtor repeatedly signed loan documents which listed certain collateral that did not then exist or that he had sold without written consent of the bank in violation of the loan documents, the bank failed to establish that the debt at issue was a debt for "willful and malicious injury" caused by the defendant the bank or to property of the bank under 11 U.S.C. § 523(a)(6). Every breach of contract or even unauthorized sale of collateral does not automatically lead to a willful and malicious injury causing the nondischargeabilty of a debt. The court denied the bank's motion to reconsider, as well. See First Bank of Linden v. Gunter, AP No. 19-80037 (Bankr. N.D. Ala. Mar. 31, 2021) (Jessup, J.). The court declined to find that every knowing breach of contract is excepted from discharge.

In re Jones, 611 B.R. 685 (Bankr. M.D. Ala. Jan. 24, 2020) (Creswell, J.)

Federal court judgment for violations of the Alabama Uniform Fraudulent Transfer Act was entitled to collateral estoppel effect in nondischargeability proceeding but sanctions orders were not entitled to collateral estoppel effect. The sanctions orders stemmed from

noncompliance with discovery, which required the federal court to weigh degrees of culpability against the prejudice to the opposing parties, not find fraudulent intent, and there were no clear findings in the sanctions orders relating to actual fraud or a fraudulent conveyance scheme by the debtors.

In re Lanier, 2020 WL 130118 (Bankr. N.D. Ala. Jan. 10, 2020) (Robinson, J.)

The debtor's installation of a pipe that encroached onto the plaintiff's property and her subsequent placement of a fence along what her surveyor said was the line between the debtor's property and the plaintiff's property were not done with intent to harm the plaintiff or her property, so the acts were not "willful" under 11 U.S.C. § 523(a)(6). Likewise, installing the pipe and fence were not wrongful, nor unjustified or excessive, so they were not "malicious" under that section. The debtor's debt to the neighbor could thus be discharged in her chapter 7 case.

Keeton v. Short, 2020 WL 6065763 (Bankr. S.D. Ala. Jan. 10, 2020) (Callaway, J.)

The court found that the plaintiff's Alabama state court judgment for trespass against the debtor was nondischargeable under 11 U.S.C. § 523(a)(6). The doctrine of collateral estoppel did not mandate the judgment of nondischargeability because the "willful" standard under § 523(a)(6) was different from the "intentional" act required for trespass under Alabama law. However, the court found that the plaintiff had nevertheless proven by a preponderance of the evidence that the trespass was a willful and malicious injury under § 523(a)(6). The debtor knew that there was a significant dispute about the boundary line of his property but went forward with cutting trees on the plaintiff's property. The evidence showed the kind of intentional act the purpose of which is to cause injury or which is substantially certain to cause injury. The debtor's conduct also implied a sufficient degree of malice for purposes of § 523(a)(6).

In re Shears, 2019 WL 4877522 (Bankr. N.D. Ala. Oct. 2, 2019) (Mitchell, J.)

The debtor's debt allegedly owed to a former tenant was dischargeable in his chapter 7 case. There was no evidence that the debtor took any action or had anyone take any action that caused injury to the tenant under 11 U.S.C. 523(a)(6). Regardless, the tenant did not meet his burden to prove that any injury was willful and malicious under that section.

Redemption

In re Rivet, 2019 WL 10856814 (Bankr. S.D. Ala. Dec. 30, 2019) (Callaway, J.)

In valuing a vehicle for redemption purposes, the court calculated the average of the clean retail and trade-in NADA values as of the petition date (considering missing or broken optional equipment) and then adjusted downward $1,200 to account for the car's rough condition.

Discharge violation

In re Curry, Case No. 19-20160 (Bankr. S.D. Ala. Nov. 18, 2019) (Callaway, J.)

In discharge violation cases where the court can award attorney's fees and costs as part of contempt sanctions, the court should not just mechanically apply a percentage in determining a fee. To hold that an attorney representing the debtor in a discharge violation case is always limited to a percentage of the recovery would greatly reduce the initiative for attorneys to take on smaller cases, which serve a useful educational and deterrent purpose for creditors who might otherwise be tempted to ignore the discharge. The court thus approved an attorney's fee award of $1,500.00 and a damages award of $1,250.00, which she claimed as exempt. The trustee raised the issue that the debtor was delinquent in her chapter 13 plan payments. However, unless a debtor agrees for an exempt amount to go toward plan payments, her or she may retain the exempt amount under *Law v. Siegel*, 571 U.S. 415 (2014).

In re Jenkins, 608 B.R. 565 (Bankr. N.D. Ala. 2019) (Jessup, J.)

Chapter 7 debtors filed a motion for contempt related to actions taken post-discharge by a creditor to collect prepetition debt for solid waste collection services. The court found that the debt did not fall within the discharge exception for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit. However, the bankruptcy court did not hold the creditor in contempt since there was a fair ground of doubt as to whether the discharge order barred the creditor's conduct under the circumstances.

In re Deemer, 602 B.R. 770 (Bankr. M.D. Ala. 2019) (Creswell, J.).

The court found that the conduct of a creditor whose claim was secured by an inoperable motor vehicle that the debtor proposed to surrender, in failing for more than a year either to repossess the vehicle or to release title, violated the discharge injunction. This case contains good discussions about the damages recoverable in a case for violation of the discharge injunction.

Property of the estate

In re Russell, 608 B.R. 893 (Bankr. S.D. Ala. 2019) (Oldshue, J.)

The "gavel rule" as codified by 11 U.S.C. § 1322(c)(1) remains the standard for evaluating a chapter 13 debtor's interest in foreclosed property. The debtor's principal residence was not property of the bankruptcy estate in a chapter 13 filed after the fall of the gavel at a foreclosure auction conducted in accordance with Alabama law.

CARES Act

In re Fowler, 2020 WL 6701366 (Bankr. M.D. Ala. Nov. 13, 2020) (Sawyer, J.)

The court overruled the chapter 13 trustee's objection to the debtor's motion to modify pursuant to the CARES Act. Bankruptcy Code § 1329(d) allows a debtor to extend payments even if the debtor had been behind in payments prior to the COVID pandemic.