Consumer Bankruptcy Panel, June 2022
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 (current through April 24, 2022)

Chapter 7

In re Mitchell, Case No. 17-4324 (Bankr. S.D. Ala. Nov. 18, 2021) (Callaway, J.)

The court denied the chapter 7 trustee's motion for the debtor to turn over postpetition rent proceeds from rental property where the debtor had assigned the rents to the mortgagee prepetition. Either (1) the mortgagee had an absolute right to the rent proceeds and the bankruptcy estate had no interest in them, or (2) the mortgagee had a perfected security interest in the rent with no equity for the bankruptcy estate.

Bad faith filings

In re Bulger, 2021 WL 5991750 (Bankr. M.D. Ala. Dec. 17, 2021) and In re Bulger, 2022 WL 348627 (Bankr. M.D. Ala. Feb. 4, 2022) (Creswell, J.)

The bankruptcy case dismissed the debtor's case with a two-year refiling ban. The court found that there was no question the case should be dismissed because the debtor failed to obtain prepetition credit counseling. The court also found that the debtor's "use of the bankruptcy process as a tactic to stall his largest creditors and an attempt to leverage a settlement" in a pending state court case, combined with multiple inaccuracies and omissions in his bankruptcy schedules, warranted dismissal under Bankruptcy Code § 707(a) and imposition of a two-year bar against refiling under Code § 349(a). The court subsequently denied the debtor's motion for a stay and injunction pending appeal.

* The debtor has appealed this case on multiple grounds, including whether a bankruptcy court may impose an injunction on refiling beyond 180 days.

Administrative expenses

In re Weldy, Case No. 21-10325 (Bankr. S.D. Ala. Nov. 1, 2021) (Callaway, J.)

The debtor converted her chapter 7 case to chapter 13 before the chapter 7 trustee could market her house. The court awarded the former chapter 7 trustee a quantum meruit administrative expense based on a lodestar time and hourly rate analysis. The trustee expended time uncovering potential assets in the chapter 7 case which benefitted the estate and prompted the debtor to move to convert the case to chapter 13. But the court agreed with the debtor that some fees requested were for normal chapter 7 trustee work, rather than specific work toward

liquidation of potential assets, and reduced the fee sought. The court also allowed the trustee an expense for an informal valuation of the debtor's home.

DSO

In re Black, Case No. 17-4773 (Bankr. S.D. Ala. Jan. 20, 2022) (Callaway, J.)

A postpetition child support obligation is not "property or services necessary for the debtor's performance under the plan" under Bankruptcy Code § 1305(a). The court thus disallowed DHR's claims for postpetition child support. However, if both the debtor and the DSO creditor agreed, the court might allow payment of postpetition child support through a chapter 13 plan if the plan paid 100% to unsecured creditors.

Late-filed claims

In re Tice, 2022 WL 532741 (Bankr. M.D. Ala. Feb. 22, 2022) (Creswell, J.)

The court sustained the chapter 13 trustee's objection to a creditor's claim filed six months after the bar date. The court found that knowledge of the bankruptcy was imputed to the creditor and there was no ground to extend the time for filing a claim where notice of the bankruptcy was sent to the creditor's state court counsel and acknowledged in the state court case.

Automatic stay

In re Dellinger, 2021 WL 4465583 (Bankr. N.D. Ala. Sept. 29, 2021) (Robinson, J.)

Creditors filed a state court case against the debtor after he filed for chapter 7 bankruptcy. They moved for relief from stay in the bankruptcy court to keep prosecuting the state court case. Based on a notification from debtor's counsel and the bankruptcy trustee that they consented to the relief, the court granted the motion. A few months later, the creditors filed another motion because the debtor (now represented by new counsel) was raising the issue that the state court case – filed postpetition – would usually be considered void, not voidable. Because the debtor consented to the original motion, even if the automatic stay would have otherwise voided the state court case, the original order granting relief from stay ratified and revived the lawsuit and the debtor was estopped from challenging the validity and continuance of the state court case.

Modification of chapter 13 plans

In re Ertha, Case No. 18-551 (Bankr. S.D. Ala. Dec. 2, 2021) (Callaway, J.)

When a trustee seeks to modify a confirmed chapter 13 plan to increase the distribution to unsecured creditors because of a postconfirmation personal injury settlement, debtors are entitled to a credit against the amount owed under the liquidation test of Bankruptcy Code § 1325(a)(4) for payments that they have made or will make to unsecured creditors under the plan pursuant to the disposable income test of Code § 1325(b). Put another way, the projected disposable income test and the liquidation test are separate, not stacked. However, the credit is only for plan payments to unsecured creditors – not the total plan payments – since the liquidation test looks at what unsecured creditors are being paid.

In re Abrams, 632 B.R. 240 (Bankr. S.D. Ala. Aug. 24, 2021) (Oldshue, J.)

The court denied the chapter 13 trustee's request to increase the plan payments and the percentage to unsecured creditors. The debtor was below median income and the applicable commitment period was only 36 months, but the confirmed plan was for 42 months and included payment of a secured debt to J & J Furniture. After J & J failed to file a proof of claim and the debtor got two months behind on plan payments, the trustee moved to increase the payments and the percentage to unsecured creditors. However, the court found that the debtor could still comply with the liquidation analysis and the disposable income test without an increase in either the percentage or plan payment. Further, increasing the dividend to unsecured creditors by using the funds originally allocated for the secured claim would essentially penalize the debtor for seeking to address all his debts in his plan at the outset of the case.

Lien avoidance

In re Barbee, 2021 WL 4448550 (Bankr. S.D. Ala. Sept. 28, 2021) (Callaway, J.)

The court granted the debtor's motion to avoid judicial lien. The debtor and his wife took their homestead property as tenants in common for life with a contingent remainder in the survivor, not as joint tenants. Under Alabama law, only the debtor's life estate in the property – not his contingent remainder interest – was subject to the creditor's judicial lien. The court accepted the testimony of the debtor's expert about the value of the debtor's life estate interest in the property. Because that value was less than the debtor's homestead exemption, the court found that the lien was due to be avoided. The court also found that the motion was due to be granted under the traditional valuation approach of *In re Lehman*, 205 F.3d 1255 (11th Cir. 2000).

Debtor's retention of assets

In re Pugh, Case No. 17-4078 (Bankr. S.D. Ala. Aug. 12, 2021) (Callaway, J.)

The insurance proceeds for a wrecked vehicle were more than the scheduled value but less than the total of the scheduled value and the amount the debtor could exempt. The court credited the debtor for "pay down" of the secured claim and ordered that most of the net auto insurance funds be paid to the debtor after paying the small balance left on the secured claim. But because the debtor was behind on her plan payments, the court ordered that the amount necessary to bring the plan current be remitted to the chapter 13 trustee with the percentage to unsecured creditors to remain the same.

Exemptions

In re McCallan, 629 B.R. 491 (Bankr. M.D. Ala. May 7, 2021) (Sawyer, J.)

The bankruptcy court partially sustained the chapter 7 trustee's objections to the debtor's exemptions, and imposed an equitable lien against Florida property that the debtor and his wife owned as tenants by the entirety. Florida law allow an equitable lien to be imposed on property acquired by fraudulent means and the court found that the debtor used the proceeds for his fraudulent debt management scheme to acquire his home and its contents. The debtor could not

claim Florida's homestead exemptions because he was not domiciled there during the 730 days prior to his filing.

* The district court affirmed the bankruptcy court's ruling on March 30, 2022.

Student loans

In re Wheat, 2022 WL 243221 (Bankr. M.D. Ala. Jan. 25, 2022) (Sawyer, J.)

The court denied the defendants' motion to reconsider its 2019 order discharging the debtor's student loans. The defendants' interpretation of the "certainty of hopelessness" language in a way that debtor could not discharge their student loans unless they showed that their current circumstances would never change was "simply not the standard." Such an interpretation would "swallow the rule and make it impossible for any debtor to ever satisfy" the *Bruner* test.

In re Acosta-Conniff, 632 B.R. 322 (Bankr. M.D. Ala. Sept. 29, 2021) (Sawyer, J.)

The court found that the chapter 7 debtor, a 44-year-old single mother with two dependent children, who worked as a public school teacher, met all the prongs of the *Bruner* "undue hardship" test and thus her student loan debtor of $112,000 was dischargeable. The debtor demonstrated good faith efforts to repay her debt: she had made payments totaling $9,275, she obtained multiple forbearances and one deferment, several times the debtor sought partial forgiveness of the debt for teaching in a rural area but was denied, the debtor's reasoning for not enrolling in an income-contingent repayment plan (ICRP) was not to avoid repayment, but because of her belief that she lacked the available income to repay the debt "in any amount," the debtor had attempted, without success, to find better employment by applying for administrative positions, the debtor had worked part-time besides her full-time teaching position, and the debtor had minimally budgeted for her family's basic needs, with minimal extraneous spending.

Dischargeability

In re Raley, Case No. 20-10482 (Bankr. S.D. Ala. Nov. 2, 2021) (Oldshue, J.)

The movants sought relief from the automatic stay to proceed with pending litigation against the individual debtor in another forum related to allegations of securities fraud and also requested an extension of time to file a dischargeability complaint. The court noted that entry of the discharge order mooted the motion for relief. Further, on considering the totality of the circumstances and pertinent factors, the court determined that "cause" existed to allow a thirty day extension for movants to file a dischargeability complaint.

In re Merchant, 2021 WL 3745944 (Bankr. N.D. Ala. Aug. 23, 2021) (Robinson, J.)

Plaintiffs were not barred by issue or claim preclusion from pursuing their nondischargeability claims against a debtor because there had never been a judgment on the merits on the plaintiffs' fraud claims in state court.

The Estates of Robert Moss and Brenda Moss, et al. v. Dorand, AP No. 21-3003 (Bankr. N.D. Fla. Aug. 3, 2021) (Callaway, J.)

The court denied the plaintiffs' summary judgment motion on their nondischargeability claim under 11 U.S.C. § 523(a)(2)(A). Because the underlying state court judgment at issue was an Alabama judgment, the court applied Alabama collateral estoppel law. The state court judgment did not state that the court found for the plaintiffs on their fraud claim; the court could have accepted the plaintiffs' testimony on breach of contract only and entered its judgment on that claim. Even so, under Alabama law, not all types of fraud will support a judgment of nondischargeability, and the court could not determine from the record before it the nature of the fraud that was pleaded or proven.

Discharge injunction

Matter of Coffey, 2022 WL 243223 (Bankr. N.D. Ala. Jan. 25, 2022) (Jessup, J.)

Chapter 13 debtor sought to reopen her case to related to an alleged violation of the discharge injunction by a creditor that repossessed her vehicle. The debtor paid the value of the vehicle through her claim plus interest at the plan (not contract) rate. After the discharge, the non-filing codebtor remained liable for the unpaid contract interest. The court found no cause to reopen the case because the creditor's lien survived post-discharge as to the non-filing codebtor and there was thus no relief available to the debtor related to the creditor's post-discharge repossession of the vehicle. The codebtor stay no longer applied after the debtor was discharged.

Fraudulent transfers

Wilkins v. McCallan, 2022 WL 610308 (Bankr. M.D. Ala. Mar. 1, 2022) (Sawyer, J.)

The chapter 7 trustee could recover $5.6 million in cash transfers that the debtor (or entitled controlled by him) made to his wife. The transfers were constructively fraudulent because none of the transfers were for adequate consideration and the debtor was insolvent with the transfers were made. The court also found evidence of actual fraud.

* The case has been appealed.

Title pawns

In re Hambright, 635 B.R. 614 (Bankr. N.D. Ala. Feb. 4, 2022) (Henderson, J.)

A motor vehicle, as opposed to its certificate of title, was not a pledged good under Alabama Pawnshop Act's automatic forfeiture provision. Thus, the pawnbroker did not acquire absolute title to the vehicle and the debtor could modify the pawnbroker's rights in her chapter 13 bankruptcy.

* The pawnbroker's appeal is currently pending.

In re Arnett, 634 B.R. 1078 (Bankr. M.D. Ala. Dec. 16, 2021) (Sawyer, J.)

A title pawn contract provision stating that the borrower did not intend to file bankruptcy violated public policy and was unenforceable against a debtor who filed chapter 13 shortly thereafter. Because the contract provision was unenforceable, the pawnbroker could not use that provision to show that the debtor filed in bad faith.

* This decision involved two separate bankruptcy cases; the pawnbroker has appealed in both cases.

Extinguishment of mortgages

In re Karr, 2022 WL 677456 (Bankr. N.D. Ala. Mar. 7, 2022) (Robinson, J.) (motion to alter or amend pending as of April 25, 2022)

Chapter 7 debtor did not schedule any real estate when he filed for chapter 7 bankruptcy relief. The chapter 7 trustee discovered in the county real estate records that the debtor owned a one-half interest in property, which the trustee then proposed to sell for the benefit of the debtor's unsecured creditors. Through a series of mistakes, only the debtor's wife's one-half interest in the property had been previously sold at a foreclosure sale, but the creditor's credit bid at the sale was for the entire mortgage debt. The bank objected to the sale of the debtor's one-half interest in the property, but the court found that the mortgage was extinguished when the bank bid the entire secured debt in exchange for the conveyance of the wife's interest at the foreclosure sale. The mortgage terminated once the debt was satisfied, and the debtor's interest in the property entered the estate free and clear of any prior mortgage.

Attorney sanctions

In re McCallan, 2022 WL 804091 (M.D. Ala. Mar. 15, 2022)

The district court found that the bankruptcy court abused its discretion in sanctioning an attorney who filed an email containing offensive and insulting language into the record without redaction or asking the email to be placed under seal. Although the attorney could have used one of those methods in filing the email, no rule specifically required that and thus sanctions were unwarranted.

Employment of professionals/approval of fees

In re McLemore, 2022 WL 362915 (Bankr. M.D. Ala. Feb. 7, 2022) and In re McLemore, 2022 WL 618958 (Bankr. M.D. Ala. Mar. 2, 2022) (Sawyer, J.)

The court ordered the law firm representing the debtor in a personal injury case to turn over the entire amount of the $40,000 settlement because the firm failed to determine whether the debtor was in bankruptcy before settling the case and failed to obtain bankruptcy court approval before disbursing estate property. The firm's lawyers "could have easily avoided the quandary" by checking PACER, and the firm had "a well-established history of converting estate

property, to the benefit of its clients and to the detriment of bankruptcy estates." The court subsequently denied the motion to alter or amend filed by one of the firm's lawyers.

* This case is currently on appeal.

Upright Law

In re Deighan Law LLC, 2022 WL 630892 (Bankr. M.D. Ala. Mar. 4, 2022) (Sawyer, J.)

The court ordered a Chicago-based law firm to pay a civil penalty of $500,000 and disgorge all fees it received in over 80 cases identified by the bankruptcy administrator. The court found that the firm engaged in the unauthorized practice of law and that the quality of work in those cases ranged "from substandard to abysmal." Judge Hawkins denied the law firm's motion to reconsider.

Abusive filings

In re Haney, Case No. 21-02007 (Bankr. N.D. Ala.) (Mitchell, J.)

The pro se debtor filed voluminous documents in both the main bankruptcy and a related adversary proceeding, many of which contained malicious and vicious accusations. The bankruptcy judge issues numerous orders, including orders that the debtor was to immediately cease repetitive and duplicate filings and, after those filings continued, that the court may enter orders summarily by handwriting its ruling on the front page of the document and having it entered by the clerk's office. The court also denied the debtor's motions for recusal (which the debtor has now appealed). Most recently, citing bankruptcy's goal of giving debtors an opportunity for a fresh start, the court found that the debtor may only stay in bankruptcy if she acts in a civilized and business-like way. See In re Haney, 2022 WL 412809 (Bankr. M.D. Ala. Feb. 10, 2022). However, if the debtor violated the terms of the order or any other orders, then the court retained discretion to dismiss the case.