DOCKET NUMBER: 88-12259
ADV. NUMBER: 89-0044
JUDGE: M. A. Mahoney
PARTIES: Nikolas Alexander Janovski, T. L. Paramanandhan
CHAPTER: 7
ATTORNEYS:
DATE: 8/29/96
KEY WORDS:
PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

NIKOLAS ALEXANDER JANOVSKI, Case No. 88-12259-MAM-7

Debtor.

T. L. PARAMANANDHAN,

Plaintiff,

v. Adv. No. 89-0044

NIKOLAS ALEXANDER JANOVSKI,

Defendant.

**ORDER DENYING MOTION TO REOPEN CASE**

This case is before the Court on the Debtor's Motion to reopen it. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. Case reopening issues are core proceedings pursuant to 28 U.S.C. § 157(b)(2) because they are matters affecting administration of estates. For the reasons indicated below, the Court is denying the motion to reopen the entire bankruptcy case, but will consider the issue of whether the garnishment in place in Adv. No. 89-00)44 should be released prospectively.

FACTS

This case was filed in 1988 by the debtor. On August 15, 1989, Debtor's former spouse, T. J. Paramanandhan, obtained a judgment declaring a debt of $16,000 on a promissory note plus

interest nondischargeable child support pursuant to 11 U.S.C. §523(a)(5).[1] That Judgment was appealed to the District Court and the Eleventh Circuit and was affirmed by them on February 22, 1990 and April 22, 1991 respectively.

Thereafter, Paramanandhan sought to enforce her child support rights. She had this Court issue a Writ of Garnishment to serve upon the U.S. Department of Health and Human Services on October 7, 1991 in order to garnish Janovski's Social Security benefits. On October 21, 1991, Janovski filed a motion to stay the garnishment. That motion was denied. A second garnishment resulted in further motions by Janovski to reduce the level of the garnishment. The history of this motion is detailed in U.S. District Judge Richard Vollmer's order which is attached. On March 25, 1993, he affirmed Bankruptcy Judge Arthur Briskman's order of October 5, 1992 declaring that a garnishment of 55% of Janovski's Social Security benefits for child support obligations owed Paramanandhan was appropriate.

None of the pleadings from January 10, 1990 through the date of the filing of the motion to reopen ever argued that the garnishment was not proper because the debt was fully satisfied. Yet on August 21, 1996, counsel for Janovski presented to the Court a certified copy of an order entered in the Circuit Court of Cook County, Illinois, which stated that:

> 2. Upon the payment of' the $10,000, . . . NICHOLAS A. JANOVSKI, is forever discharged and released from any and all further obligations to pay child support . . . [for the children he had with Paramanandhan].
>
> 3. That . . . Paramanandhan shall be forever barred from making any further claim for child support from . . . Janovski . . .

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[1]'Janovski also owed a debt to Paramanandhan for periodic child support, not supported by a note, which the parties agreed was nondischargeable and the Court declared nondischargeable on August 3, 1989.

> 4. That . . . Janovski shall not have to make any further payments of any kind, nature or description, in behalf of the two children [that he had with Paramanandhan].

On May 2, 1990, the Debtor filed a disclosure statement and plan which indicated the Cook County order related to payment of future periodic child support payments—not the promissory note debt. Now, at this late date, Janovski seeks to reopen his entire bankruptcy case to set aside the garnishment in place against his Social Security benefits on the basis of the 1990 order.

## LAW

A case may be reopened pursuant to 11 U.S.C. § 350(b) for "cause." Whatever needs to be done on the garnishment issues can be done in the adversary case. There is no "cause" to reopen the main case since what is at issue will not result in assets for creditors.

Based upon equitable estoppel and law of the case grounds, Janovski cannot seek to modify or recover any of the payments made to date pursuant to the writs of garnishment issued in Adversary No. 89-0044. He never raised satisfaction of the obligation as a defense, even though he alleges he potentially had it available to him.

Equitable estoppel "exists when the conduct of one party has induced the other party to take a position that results in harm if the first party's acts were repudiated." Glass v. United of Omaha Life Ins. Co., 33 F. 3d 1341, 1347 (11th Cir. 1994). Paramanandhan clearly would be harmed if the garnishment could be retroactively rescinded. There are three elements of equitable estoppel: "(1) a representation of fact by one party contrary to a later asserted position; (2) good faith reliance by another party upon the representation; and (3) a detrimental change in position by the later party due to the reliance." *Marine Transportation Services Sea-Barge Group, Inc. v. Python High Performance Marine Corp.*, 16 F.3d 1133, 1139 (11th Cir. 1994). They are present here.

The law of the case doctrine, which also applies here, is as follows:

> The "law of the case" doctrine invokes the rule that findings of fact and conclusions of law by an appellate court are generally binding in all subsequent pleadings in the same case in the trial court or on a later appeal. (Citations omitted.)

Judge Vollmer, in his March 25, 1993 order, stated:

> A hearing on Janovski's motion [to stay garnishment] was held on December 13, 1991. At the outset of the hearing Janovski's attorney, John Bender. acknowledged the indebtedness owed by his client to Paramanandhan. (p.4)
>
> . . .
>
> Janovski acknowledges that he has an obligation to support the college education needs of his two sons. (pp. 13-14)

In this case, Judge Vollmer's findings and conclusions cannot be overturned now (at least retrospectively). The only circumstances allowing a court to depart from prior appellate findings in a case are (1) a subsequent trial produces substantially different evidence (which could result in this case as to prospective garnishment); (2) controlling legal authority has changed (which it has not); or (3) the prior decision was erroneous or manifestly unjust (not shown in this case to date). *E.E.O.C. v. International Longshoremen s Association*, 623 F.2d 1054 1058 (5th Cir. 1980); *Dorsey v. Continental Cas. Co.*, 730 F.2d 675, 678 n.2 (11th Cir. 1984).

Whether the 1990 Cook County order is properly raised as a bar to prospective garnishment only is the issue which this Court must address. At issue will be the wording and intent of the order, the purpose of the order, the purpose of the hearing, the parties' understanding of the order, and the parties' postorder actions based upon the order, among other issues.

THEREFORE IT IS ORDERED that the motion of the Debtor to reopen the case is DENIED; however, the Court shall hold a hearing on **September 17. 1996 at 8:30 a.m.** to determine the prospective effect of the 1990 Cook County order, if any.

Dated: August 29, 1996

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MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE