

BANKRUPTCY ISSUES IN STATE COURTS

The Hon. Elizabeth A. Weishaupl

District Court Judge

18th Judicial District, Colorado

- I. The Automatic Stay – what does it stay?
 - A. Depends on the case
 - B. Criminal Cases – no effect 11 U.S.C. § 362(b)(1) – *In re Bartel*, 404 B.R. 584 (B.A.P. 1st Cir. 2009)
 - C. Civil cases – generally yes – until discharge
 1. Suggestion of Bankruptcy
 2. Motion to Stay or Administratively Close
 3. Except Contempt cases
 - D. Domestic Cases – not necessarily 11 U.S.C. § 362(b)(2)(B)
 1. Stay does not affect many types of actions
 2. Paternity
 3. Establish or Modify Child Support
 4. Establish or modify child custody or visitation
 5. Proceedings for dissolution of a marriage –
 - a. Except for proceedings to divide property of the bankruptcy estate

6. Actions regarding domestic violence
7. Actions to collect child support arrearages
8. Non Dischargeability of Domestic Support Obligations
 - a. § 523(a)(5) domestic support obligations are not dischargeable
 - b. However, the bankruptcy court does not have to accept
 - i. Designation of support and property settlement
 - ii. The state approved dissolution decree and property settlement
 - iii. Can void as a fraudulent a transfer of property ordered by a divorce court in its determination of a fair and equitable division of property. *In re Kelsy*, 270 B.R. 776 (10th Cir. BAP 2001).
 - c. State and Bankruptcy Courts have concurrent jurisdiction
 - i. To determine dischargeability, *Eden v. Robert A. Chapski Ltd.*, 405 F.3d 528 (7th Cir. 2005) (state court had concurrent jurisdiction to determine dischargeability of attorney fees in divorce cases)

- ii. Pursuant to § 523(a)(5)
- iii. As long as the state court has not made a ruling as to dischargeability, the bankruptcy court has jurisdiction
 - 1. To look behind the language of a decree
 - 2. To determine if the award is actually in the nature of support
 - 3. When challenged, Court looks to the intent of the parties at the time and the substance of the obligation
 - 4. *In Re Sampson*, 997 F.2d 717 (10th Cir. 1993)
 - 5. *In Re Eden*, 405 F.3d 582 (7th Cir. 2005)
 - 6. In such action the party seeking to hold the debt non-dischargeable has the burden of proof
 - 7. How parties label support obligations is “only persuasive evidence of the parties intent” *In Re Sampson, supra*

iv. BAPCPA cases

- 1. Focus is whether the debt is “owed or recoverable by – i) a spouse, former spouse, child of debtor or such child’s legal guardian or

responsible relative; or ii) a governmental unit?

11 U.S.C. § 101 (14A)(A)

2. Post BAPCPA courts differ in interpretation

a. *In Re Brooks*, 371 B.R. 761 (Bankr. N.D.

Tex. 2007)(amount ordered by divorce

court to be paid to attorneys of debtor's

ex-spouse was dischargeable; not a

domestic support order because not

payable to ex-spouse)

b. *In Re Poppleton*, 382 B.R. 455 (Bankr.

D. Idaho 2008) (adversary proceeding

brought by personal representative of ex-

spouse, P.R. lacked standing as was

neither spouse, nor ex-spouse)

c. *In re Orzel*, 386 B.R. 210 (Bankr. N.D.

Ind. 2008)(debtor's obligation to pay

attorney fees to third party law firm not

an obligation for alimony, maintenance,

or support owed to spouse, former spouse

or child)