

NEW YORK STATE  
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE  
DIVISION OF LEGAL AFFAIRS  
2022 BANKRUPTCY CASE LAW UPDATE

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**In re: Beasley**, 2019 WL 3403361 (B. Ct. N.D. Ala. 2019). Creditor filed a motion to dismiss the Chapter 13 bankruptcy case or to convert the case to Chapter 7 on grounds of bad faith and nonpayment of post-petition support. The debtor then paid all the post-petition support due. The bankruptcy court acknowledged that the debtor had misbehaved in the state court support proceedings by flaunting the court’s orders, failing to appear for contempt hearings, sanction hearings and attorney fees award hearings. The bankruptcy court found the debtor not to be an honest or credible person base on filings and actions in the bankruptcy proceeding. However, the bankruptcy judge did not find that the debtor filed his Chapter 13 petition “for a fundamentally unfair, greedy or unworthy purpose” which is the standard for the dismissal of a bankruptcy case for bad faith filing in the 11th Circuit.

The creditor filed a claim for matrimonial debts labeled as equitable distribution in the divorce decree, listing them as priority DSOs. The bankruptcy court found that the language of the Equitable Distribution Judgment, the income disparity, the Creditor's need for additional training to re-enter the workforce, the presence of the Minor Child for whom the Creditor had primary physical custody, and the significant length of the marriage all weighed in favor of a finding that the Equitable Distribution Judgment was in the nature of support. The court directed him to file an amended plan consistent with the court’s findings including paying the DSO and secured claims in full..

**In re Bronson**, 2022 WL 3637566 (B. Ct. D. Or., 2022). The debtor made a motion for summary judgment seeking to hold Oregon Division of Child Support (“DCS”) in contempt for violation of the automatic stay and for failure to comply with the terms of the court's order confirming the chapter 11 plan. The debtor alleged that DCS violated the stay and the plan when it intercepted a \$1,200 stimulus payment that was issued under the CARES Act, sent notices to debtor post-petition, and caused debtor's passport to be withheld.

At the time of chapter 11 filing, debtor had an obligation to pay child support of \$550 per month. Debtor listed DCS and the Oregon Department of Justice on his bankruptcy schedules as holding a pre-petition child support claim of \$10,130. DCS received notice of the bankruptcy in March 2020. After the petition was filed, DCS continued to send monthly statements for child support to the debtor.

DCS intercepted a stimulus payment to the debtor of \$1,200 on May 2, 2020. Debtor filed his plan of reorganization dated May 27, 2020 (the “plan”). The plan provided for full payment of current support and arrears.

After the plan was filed the debtor and the custodial parent reached an agreement ending child support and forgiving arrears in exchange for his supporting adoption of the child by a family member, effective after the adoption was complete. The bankruptcy plan was amended to remove the child

support claim but the terms regarding his obligation to pay support were not changed. The plan was confirmed, and the child's adoption finalized in 2021, ending the support obligation.

After the support obligation ended, DCS sent the debtor 3 billing statements for unpaid child support. These statements also contained a statement that "If you have a written agreement to pay a different amount, it is not reflected above." Debtor's passport had been withheld by the State Department due to unpaid child support.

The bankruptcy court found that debtor owed five monthly payments for child support that arose between August 13, 2020, and January 28, 2021. Under the parties' agreement, all child support obligations of the debtor that accrued on or before August 12, 2020, were released. The agreement was silent about monthly child support obligations accruing afterwards. The plan required debtor to pay normal monthly child support payments, which would include normal monthly child support amounts accruing between August 13, 2020, and January 28, 2021. Pursuant to the terms of the agreement and the plan, debtor owed unpaid child support for five post-petition payments of \$550 each, for a total of \$2,750.

The court found that DCS did not use the billing statements to try to collect more than it was entitled to collect. DCS did not demand payment of more than \$2,750 after the plan was confirmed. DCS included language on the statements that "If you have a written agreement to pay a different amount, it is not reflected above." A court could reasonably conclude that DCS acknowledged the existence of the Settlement Agreement as a "written agreement to pay a different amount" that would reduce the amount of arrearage actually due.

The filing of a bankruptcy case does not stay "the collection of a domestic support obligation from property that is not property of the estate." 11 U.S.C. § 362(b)(2)(B). The filing of a bankruptcy case also does not stay "the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law." 11 U.S.C. § 362(b)(2)(F).

A violation of an order confirming a chapter 11 plan is an act of contempt, which may be remedied by the court's authority under 11 U.S.C. § 105(a). Section 105(a) authorizes the court to issue any order, process, or judgment necessary or appropriate to carry out the provisions of the Bankruptcy Code, which includes enforcement of the bankruptcy court's own orders through the imposition of sanctions of civil contempt. To establish a basis for civil contempt, the moving party has the burden to show by clear and convincing evidence of a violation of a specific and definite order of the court. There must be no fair ground of doubt as to whether the order confirming plan barred the creditor's conduct.

The stimulus payment at issue can appropriately be treated as a tax refund. "Tax refunds come from two sources. First, they can result from over-withholding of payroll tax. Second, they can result from tax credits such as the Earned Income Credit (EIC), Child Tax Credit (CTC), or other tax credits that are available to low-income workers and result in tax refunds." The automatic stay did not prohibit DCS from collecting from tax refunds, regardless of whether those refunds were estate property.

The analysis of whether DCS violated the automatic stay or the order confirming the plan differs depending on when the statements were sent. The court addresses statements sent at different times below.

DCS did not violate the automatic stay when it sent statements to debtor after he filed his petition and before he confirmed his plan. These statements did not violate the automatic stay because DCS was entitled at that time to collect child support from assets that were not property of the estate. There was nothing in the statements to indicate they were directed toward collection from property of the estate. In addition, assets acquired post-petition and earnings from services performed by the debtor post-petition are not property of the estate unless and until a plan is confirmed. DCS did not violate the order confirming the plan by sending statements prior to confirmation of the plan, because the order did not exist at that time.

DCS did not violate the automatic stay when it sent statements to debtor after the plan was confirmed. Property of the estate, other than property required to perform obligations under the plan, reverted in the debtor upon confirmation of his plan, and the automatic stay no longer applied to that property. Viewing the evidence in the light most favorable to the non-moving party, DCS intended to collect the post settlement monthly amounts due only from this non-estate property after the plan was confirmed. There was nothing in the statements to indicate that DCS was directing them toward collection from any property remaining in the estate.

DCS also did not violate the terms of the order confirming the plan when it sent statements post-confirmation. Viewing the evidence by drawing all inferences in the favor of the non-moving party, the statements DCS sent post-confirmation did not demand payment of more than the monthly child support that was expressly due and required to be paid under the plan. The plan provided that the debtor would make normal monthly child support payments pursuant to the support order. The fact that the post-confirmation statements included incorrect information about the amount of the arrearage does not change this conclusion. The statements indicate that it was possible a different amount would be due because each statement contains a disclaimer that the terms of written agreements to pay different amounts were not reflected in the statement.

The record is insufficiently developed to provide a basis for the court to grant summary judgment establishing liability for violation of the automatic stay regarding the withholding of debtor's passport. Debtor's only evidence regarding the passport, a single paragraph in debtor's declaration, does not specify when DCS acted and exactly what actions it took. If, as DCS has asserted, DCS only provided a pre-petition notice to the State Department that the debtor owed unpaid child support, and did not take any action post-petition, then DCS did not violate the automatic stay. Inaction that merely maintains the status quo does not violate the automatic stay.

Debtor argued that DCS violated the order confirming the plan by not acting affirmatively to release the hold on the debtor's passport. He argued that the Settlement Agreement and the plan deemed all of debtor's obligations to support his child "satisfied" or "waived," and DCS had a duty "to trigger the release of his passport" after these obligations were extinguished. The court found that the Settlement Agreement and the plan did not satisfy or waive all of debtor's obligations to support his child.

**In re Hamrick**, 627 B.R. 619 (B. Ct. S.D. S. C., 2021). The parties were divorced in North Carolina. In 2020, the custodial parent filed a lawsuit in Florida seeking child support, reimbursement of medical/dental expenses, medical/dental insurance, life insurance to secure child support, attorney's fees, establishment of a parenting plan, amendment of a trust established on behalf of their daughter, rescission of the marital settlement agreement, and division of marital property, including debtor's

military retirement. She also claimed failure to comply with certain elements of the separation agreement, unjust enrichment, constructive fraud by breach of fiduciary duty, and conversion.

Shortly thereafter, debtor, a resident of South Carolina, filed a petition under chapter 13 of the Bankruptcy Code. The Bankruptcy Noticing Center served Defendant with the “Notice of the Chapter 13 Bankruptcy Case” by U.S. mail sent to her residence. The Florida court was also served with the notice. The clerk of court closed the court file. The custodial parent filed a motion to reopen, with a request for attorney’s fees and other relief against the debtor. The case was reopened.

Debtor's bankruptcy counsel notified the custodial parent’s counsel that he believed that her motion was a violation of automatic stay and continued prosecution of the motion would expose counsel and client to a proceeding for willful violation, including recovery of any damages, attorney's fees, and punitive damages.

After a number of motions and withdrawals of motions in the Florida court, the debtor’s counsel asked for a conference on the motions. The custodial parent’s attorney suggested that, due to the stay, a status conference would be more appropriate. The CP also filed a motion for relief from the automatic stay in bankruptcy court to proceed on all counts of her Florida complaint. After the conference, the Florida court held a hearing on the 7 outstanding motions.

After several motions, claims, objections, and other proceedings in bankruptcy court, the debtor sought damages for the custodial parent’s willful violation of the automatic stay. The basis for the complaint was that she pursued the Florida court action after the debtor filed his bankruptcy case by filing of the motion to reopen the action and allowed the continued prosecution of complaints which included property distribution and other claims beyond child support and custody.

To recover damages for willful violation of the automatic stay, debtor must prove that (1) a bankruptcy petition was filed, (2) that the debtor is an “individual” protected under the automatic stay provision, (3) that the creditor received notice of the petition, (4) that the creditor’s actions were in willful violation of the automatic stay, and (5) that debtor suffered damages.

The Fourth Circuit has held that a willful violation of the automatic stay occurs when a creditor knows of the pending bankruptcy petition and intentionally attempts to continue collection procedures in spite of it. The determination of whether an act is a willful violation is an objective analysis as the Court does not consider the subjective intent of the creditor. Knowledge of the bankruptcy is the legal equivalent of knowledge of the stay.

Despite having notice of the pending bankruptcy case, the custodial parent filed a motion to reopen the Florida court action. In the motion, she requested an order for attorney’s fees and costs. The Court found that this filing violated the automatic stay because it sought affirmative relief that was barred by the automatic stay, such as marital property division, damages for unjust enrichment, constructive fraud, conversion, and attorney fees and costs. The Court found that the violation of the stay was willful because the motion was made with knowledge of the pending bankruptcy case. Her mistaken belief that the pending bankruptcy case did not affect the Florida action was immaterial to the question of whether a stay violation has occurred, even if such belief was based on advice of counsel.

The court awarded attorney’s fees for the Florida action, except costs related to the hearing held on consent of the debtor’s attorney. An award of damages must be founded on concrete, non-speculative

evidence and cannot be based merely on speculation, guess or conjecture. Debtor's counsel had to present affidavits specifying the attorney's fees and costs.

The debtor claimed that he had take 12 days of paid time off (valued at \$2,900) and incurred travel expenses (transportation, lodging, and food) of approximately \$3,000 to attend hearings as a result of the stay violation. The Court was not persuaded that damages in the form of lost paid time off and travel expenses were appropriate. One of the Florida court conferences was held by Zoom and the other was on consent of the parties. The numerous bankruptcy court hearings were necessary to the administration of his bankruptcy case, regardless of any alleged stay violations. By filing his bankruptcy petition in South Carolina, he voluntarily elected to attend hearings related to his case, including any adversary proceedings he filed in that case, in this venue and to incur any necessary travel expenses. Also, he didn't present evidence to support the valuation of his travel expenses, such as flight, lodging, restaurant, or fuel receipts, or the valuation of his paid time off, such as his pay stubs. Based on the evidence, the Court found that debtor failed to meet his burden of proof to demonstrate damages that were the direct and proximate result of the stay violation in the form of lost paid time off and travel expenses.

The debtor claimed damages for the emotional distress he experienced due to the willful violation of the stay. He testified that he needed monthly visits with the military chaplain to help him deal with his stress. He was not charged for visits with the chaplain. He did not present any testimony or other evidence of any physical ailments that required medical treatment or medication resulting from his stress. This testimony did not convince the Court that he experienced emotional distress proximately caused by the stay violation itself, as opposed to the general stress experienced by a person going through a difficult domestic dispute involving his children.

The debtor has also made a claim for punitive damages but did not present any testimony or argument in support of his claim. An award of punitive damages is within the discretion of the Bankruptcy Court and is a fact specific determination. The Court did not find the custodial parent's actions to be sufficiently egregious to justify an award of punitive damages.

**In re: Cascone**, 572 B.R. 379 (B.Ct. M.D. Fla., 2017). The CP filed a Motion for Contempt against the debtor in the Georgia State Court. Shortly after, the debtor filed a chapter 7 petition in bankruptcy court. The state court issued an order declining to hold the debtor in contempt and setting the amount of arrears. The CP then filed a Motion for an Income Deduction Order (IDO) in the state court. The court-issued IDO directed the debtor's employer to deduct \$7,000 per month from the debtor. The deduction consisted of \$4,000 per month in current support, and \$3,000 per month to pay the arrears.

The debtor then filed a Motion to convert his bankruptcy case, and the Chapter 7 case was converted to a case under Chapter 11. He filed a motion for injunctive relief in the converted case asserting that the CP violated the automatic stay by prosecuting the contempt motion and by seeking the IDO. The debtor asked the Court to order the CP to immediately cease garnishment of his wages and release all property of the bankruptcy estate.

The Bankruptcy Court held that section 362(b)(2)(C) of the Bankruptcy Code permitted court-ordered withholding of the debtor's income for the payment of a domestic support obligation under chapters 11, 12, and 13, even from property of the estate. Even though post-petition income is property of the estate in Chapter 11, the IDO was not a violation of the stay. By enacting § 362(b)(2)(C), "Congress sought

to enable a DSO creditor to reach assets of the estate post-petition without having to seek relief from the stay.”

The debtor argued that the IDO should not be permitted in this case because the deduction was based on the state court contempt proceeding, and that proceeding violated the stay. An order issued by the state court in violation of the stay would be void. The court rejected this argument.

Section 362(b)(2)(B) provides that the filing of a bankruptcy petition does not operate as a stay “of the collection of a domestic support obligation from property that is not property of the estate.” In this case, the debtor initially filed under chapter 7 and was still proceeding under that chapter when the state court issued its order. In a Chapter 7 case, property of the estate includes property of the debtor as of the commencement of the case but does not include post-petition wages or the assets that he acquires after the bankruptcy filing. Since the state court order was entered the debtor's case was a Chapter 7 case, the order was excepted from the stay because it involved collection of the DSO from property that was not property of the estate.

**City of Chicago, Illinois v Fulton**, 141 S. Ct. 585 (2021).

The mere retention of estate property after the filing of a bankruptcy petition does not violate the automatic stay provision in §362(a)(3) of the Bankruptcy Code. Under that provision, the filing of a bankruptcy petition operates as a “stay” of “any act” to “exercise control” over the property of the estate. Taken as a whole, §362(a)(3) only prohibits affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed.

**In re Cooley**, 2019 WL 409411 (S.D. Ala. B. Ct., 2019). The debtor and creditor/custodial parent divorced in October 2018, and the debtor was ordered to pay \$733/month in child support plus \$13,924.00 child support arrears. 8 days later debtor filed a petition under Chapter 13. After filing the petition, debtor missed four child support payments. The custodial parent moved to dismiss the bankruptcy petition.

11 USC Section 1307(c)(11) states that a court may dismiss a debtor's case for “failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.” 11 U.S.C. Section 507(a)(1) provides that claims for domestic support obligations have first priority above all other claims, including administrative expense claims.

In 2005, Congress amended the bankruptcy code. The Eleventh Circuit has set out several of the general objectives considered by Congress when it amended the code:

1. Bankruptcy should interfere as little as possible with the establishment and collection of on-going obligations for support, as allowed in State family law courts.
2. The Bankruptcy Code should provide a broad and comprehensive definition of support, which should then receive favored treatment in the bankruptcy process.
3. The bankruptcy process should insure the continued payment of ongoing support and support arrearages with minimal need for participation in the process by support creditors.
4. The bankruptcy process should be structured to allow a debtor to liquidate non-dischargeable debt to the greatest extent possible within the context of a bankruptcy case and emerge from the process with the freshest start feasible.

146 Cong. Rec. S11683–02 (daily ed. Dec. 7, 2000) (statement by Sen. Grassley).

“The creation of this higher priority for domestic support obligations was ... designed to enhance the status of domestic support obligations in bankruptcy cases and to prevent what Congress believed to be abuses of the bankruptcy process with respect to domestic support obligations.” Collier on Bankruptcy p. 507.02 (16th 2017). The series of domestic support amendments mark a clear congressional intent that domestic support obligations be considered paramount in bankruptcy cases. Id.

The plain language of Sections 507(a)(1) and 1307(c)(11) gave the court authority to dismiss a debtor's case for failure to pay post-petition child support. However, in an effort to give the debtor a fresh start, the Court conditionally denied the motion to dismiss. The debtor was ordered to catch up his outstanding child support payments by making two payments in the amount of \$ 1,466.00. If either payment was not timely made the custodial parent could alert the Court and the petition would be dismissed without a hearing or further delay.

**In re: Desouza**, 493 B.R. 669 (BAP 1st Cir., 2013). The debtor filed a petition under chapter 13 in January 2011. His chapter 13 plan was a 36–month plan that called for payments of \$89 per month. In June 2011, the debtor's spouse filed for a divorce. The state court granted the divorce and alimony to the debtor's spouse. When the debtor failed to make his payments, the ex-spouse started contempt proceedings. The state court entered an order of contempt and since the debtor defaulted, issued a warrant.

The debtor filed an Amended Schedule J to include alimony payments of \$600.00 per month. The bankruptcy court confirmed the debtor's chapter 13 plan. The plan did not mention the debtor's alimony obligation, nor did it address how much was owed or how it was to be paid.

The debtor was arrested and brought to the state court. After a hearing, the court found the debtor in contempt and fixed arrears at \$9,750. The court found that he had the ability to comply with the contempt order through rental income. The debtor spent three weeks in jail before he could make the purge payment.

The debtor filed an emergency motion seeking a determination regarding the validity of entry and enforcement of a domestic relations order post-petition. He argued that the debtor had to get relief from the stay to get an order of alimony and institute a contempt action. He claimed that the orders were void as a result. The bankruptcy court denied the motion and the debtor appealed.

The bankruptcy appellate sustained the holding that the order setting alimony was valid and reversed the contempt order. The establishment or modification of an order for domestic support obligations is an exception to the automatic stay. However, the contempt proceedings and the debtor's incarceration for failure to pay alimony violated the automatic stay and were void.

**In re: Dillon**, 619 B.R. 357 (B. Ct. S.D. Miss., 2020).

The parents divorced in 2015 and the mother/creditor was awarded custody of their child, and the father/debtor was ordered to pay child support of \$504 per month. The mother was also awarded \$9000 of the equity in the home to be paid within ninety days of the decree and court costs and attorney's fees totaling \$1207. She testified in the bankruptcy hearing that the purpose of the \$9000 award was for her to establish a place to live for herself and the child, as the debtor was granted use of the marital home. The debtor did not comply with any aspect of the divorce decree.

On May 20, 2016, the debtor filed a chapter 13 petition. His schedules listed “ongoing child support” as the mother’s only claim. He denied having any codebtors (the parents co-owned the house and a car). The mother received no notice of the bankruptcy because the debtor listed her on the creditor matrix at an address where she had not lived for more than fifteen years.

On June 6, 2016, the state court, unaware of the bankruptcy, heard the mother’s Petition to Cite for Contempt against the debtor. He did not appear, and the court found him in contempt on a number of issues, including failing to pay child support; failing to keep current on the mortgage, thereby damaging the mother’s credit; failing to make payments on the car awarded to the mother, causing the car to be repossessed and hurting the mother’s credit; failing to pay the attorney’s fees; and failing to pay \$9000 from the equity in the home. The court awarded attorney’s fees and entered a money judgment and a purge amount to avoid incarceration.

The mother’s divorce attorney found out about the bankruptcy but did not notify her. He informed the debtor’s bankruptcy attorney of the divorce and the mother’s correct contact information. The bankruptcy attorney did not contact her. The deadline for filing claims expired in October 2016. In December, the bankruptcy court confirmed the chapter 13 plan. The plan provided only for child support through payroll deduction. The plan for the \$9000 payment was to “abandon and pay zero.

In January 2017, the mother finally learned of the bankruptcy. In 2020, she obtained counsel and filed a late proof of claim for \$12,962.08 based on the contempt order as a DSO. The debtor objected that the claim should be disallowed as untimely and that it was not a priority claim.

The court found that the child support arrears had been paid. It also held that the state court proceedings, which were held after the petition was filed, violated the automatic stay and voided the contempt order. While actions for criminal contempt are not barred by the stay, the state court action was in the nature of a civil contempt proceeding. The primary purpose of a criminal contempt proceeding is to either punish a party for bad conduct or vindicate the authority of the court. The primary purpose of a civil contempt proceeding is to either coerce compliance with a previous order or compensate the wronged party for the contemnor’s violation. Orders which permit a debtor to avoid punishment by complying with the court’s directive (such as a purge amount) are civil contempt orders. The attorney’s fees awarded in that proceeding could not be part of the claim.

The court held that the \$9000 payment from the home’s equity and the award of attorney’s fees in the divorce were DSOs. A DSO is a debt (1) owed to or recoverable by a former spouse; (2) in the nature of alimony, maintenance or support, regardless of whether the debt is expressly designated as such; (3) established by the applicable provisions of a divorce decree or other court order before, on, or after the date the bankruptcy case was filed; and (4) not assigned to a nongovernmental entity. 11 U.S.C. § 101(14A). Determining whether a payment is in the nature of support is a matter of federal bankruptcy law, not state law. Regardless of how the obligation was labeled in the divorce court, the bankruptcy court determine the true nature and purpose of the award. The bankruptcy court must consider the factors relevant to characterizing the debt and determine the intent of the court in imposing the obligation.

The wording of the Decree and other evidence established that the state court intended the \$9000 award as support. Although the award was to come from the equity in the home, the Decree ordered the debtor to pay the CP “no less than” \$9000, implying that the award was not a property settlement.



The mother's testimony that the award was to help her get established supported this conclusion, as did the parties' income disparity. Because the award of attorney's fees and costs also reflected a balancing of the parties' financial needs and the income disparity, it was in the nature of support.

However, the claim was disallowed as untimely. The Federal Rules of Bankruptcy Procedure provide that the deadline may be extended on the conditions specified in Rule 3002(c). The only basis for extension that might apply was if notice was insufficient to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a).

There is a split in the bankruptcy courts about when this rule applies. Some courts read the exception literally to mean it is available only when the debtor fails to timely file any creditors list. Other courts hold that the triggering event is the debtor's failure to timely file a complete and accurate list.

On the facts here, Rule 3002(c)(6)(A) didn't regardless of how it is interpreted, because the mother had a reasonable time to file the Claim after she received notice of the case. Although she did not know of the bankruptcy until three months after the claims bar date, her then-attorney knew more than two months before the bar date, and his knowledge was imputed to her.

Although the claim was not allowed and would not be paid under the bankruptcy plan, it was nondischargeable as a DSO. The debt could be enforced after the case was closed or dismissed.

**In re: Dougherty-Kelsay**, 636 B.R. 889 (6th Cir, BAP, 2021) (Aff., 6<sup>th</sup> Cir Ct of App, 2022 WL 9730003, 2022). Before the bankruptcy petition was filed, the CP initiated a court proceeding seeking reimbursement for debtor's share of incurred expenses of the child. The debtor filed a bankruptcy petition. The debtor's attorney notified the court and the CP's attorney of the petition and advised the CP's attorney that the stay barred the enforcement proceeding. The CP's counsel argued that the proceeding could go forward as the debt was a DSO. The Family Court held the hearing, made findings on the amount due, and found debtor in contempt of a prior order. It also ordered an increase in the wage garnishment amount for arrears and ordered the debtor to make a \$50 payment outside the wage garnishment.

The debtor's federal tax refund was offset to pay the outstanding child support arrears, except for a medical bill. The CP made other demands for payment and filed another contempt proceeding to collect the medical expense. Debtor's counsel again objected and sought dismissal due to the stay.

The debtor filed a motion with the Bankruptcy Court requesting sanctions for violation of the automatic stay because of the post-petition hearings and the CP's collection efforts. The Bankruptcy Court found that some actions violated the automatic stay and awarded attorneys' fees as actual damages and punitive damages. The BAP affirmed.

Following an evidentiary hearing, the bankruptcy court held that the family court was authorized to establish the amount of the debtor's share of child rearing expenses. It also held that the amendment to garnish income was exempt from the stay, as was the interception of the tax refund. In addition, some of the medical expenses were incurred post-petition, and so collection of those debts was not barred by the stay.

The filing of a bankruptcy petition operates as a stay: 1) of the commencement or continuation of a judicial proceeding; 2) to recover a claim against the debtor that arose before the case; 3) of

enforcement against the debtor or against property of the estate of a judgment obtained before the case, or; 4) of any act to obtain possession of or exercise control over property of the estate. 11 U.S.C. § 362(a). However, the Bankruptcy Code allows a court to establish the support obligation and the amount owed. 11 U.S.C. § 362(b)(2)(A)(ii).

The Bankruptcy Court found that the order for debtor to pay the CP the \$50 payment was a violation of the stay because, although the Family Court intended the payment to apply to a DSO, that court did not limit collection to non-estate assets. All attempts by the CP to collect the \$50 Payment, including filing Contempt Motion No. 3, violated the automatic stay. The Family Court's contempt findings were void because although it was proper for the Family Court to find debtor owed Creditor the \$50 Payment, exercising its contempt power to aid the CP to collect it was not. The Bankruptcy Court awarded debtor attorneys' fees in the amount of \$4,313.75 and punitive damages of \$1,000.

**In re: Gonzalez**, 832 F.3d 1251 (11th Cir. 2016). The State of Florida Department of Revenue attempted to intercept the Chapter 13 debtor's work-related travel reimbursement check for the payment of a domestic support obligation (DSO). The debtor objected to the collection attempt based on the bankruptcy and Florida returned the funds and stopped all collection activities. The debtor filed motion to hold the state in contempt for violating the bankruptcy court's confirmation order. The court held the state in contempt for violating the confirmation order and awarded debtor \$21,360.00 in attorney fees. Florida appealed and the district and Circuit courts affirmed.

Florida argued that the bankruptcy court erred in holding it in contempt for intercepting Gonzalez's reimbursement payment even though its collection efforts occurred after the confirmation of the plan. The argument centered on the interplay between 11 U.S.C. §§ 362 and 1327. § 362 initiates an automatic stay but permits “the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute.” Id. § 362(b)(2)(C). § 1327(a) provides that “[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.”

After reviewing the legislative intent and other court decision, the Circuit court held that the provisions are not inconsistent. The legislative intent behind § 362(b)(2)(C) permits a DSO creditor to collect notwithstanding the automatic stay but does not create an exception to interfere with the binding effect a confirmed plan per § 1327(a). Although Florida did not violate the automatic stay when it intercepted Gonzalez's reimbursement payment, it did violate the confirmed plan. A plain reading of § 1327(a) makes clear that the binding effect of a confirmed plan encompasses all issues that could have been litigated, including whether Florida could intercept the reimbursement payment. Accordingly, because the plan was silent on the issue of interception of the reimbursement payment, the Florida was prohibited from taking such action.

**In re Hutchens**, 480 B.R. 374 (B. Ct. M.D. Fla., 2012). The parties divorced in New Hampshire and the debtor was ordered to pay child support. In a post-divorce proceeding, debtor was ordered to pay support arrears, attorney's fees and interest imposed as a sanction for contempt. The court ordered a payout including the arrears, current support, and other support. After the proceeding, due to the debtor's financial circumstances, the ex-wife agreed that he could pay a lower monthly amount without waiving the arrears and other amounts due.

The debtor filed a chapter 13 bankruptcy petition. The ex-wife filed a claim for \$78,000 unpaid support (based on the lower payment amount), classifying it as a DSO. She did not file a claim for the full amount of arrears, the interest, or the attorney's fees. The debtor's confirmed plan allowed for full payment of the claim but not the remaining child support debt.

The debtor was current on plan payments but stopped making post-petition child support payments. When the support payments stopped, the ex-wife instituted contempt proceedings in state court and asked the bankruptcy court to dismiss the bankruptcy case. The debtor moved for a finding of contempt and sanctions against the ex-wife for pursuing collection of prepetition claims in state court in violation of the terms of the plan.

In determining whether a debt is in the nature of support, courts look to federal bankruptcy law and not state law. State law can provide guidance in determining whether a debt is in the nature of support. Bankruptcy courts need to look past the label assigned to a debt and determine whether that debt is in the nature of alimony or support.

The court held that the arrears, consisting of unpaid alimony, child support, medical bills, college expenses for the child, interest/sanctions, and attorney's fees were a DSO. The amount of these claims was \$139,199.

A creditor is allowed a priority claim for the full amount of a DSO, but the ex-wife, in her claim and in her objections to the plan, did not ask for the full amount owed. § 1322(a)(2) requires that the plan pay the DSO in full. However, upon confirmation a Chapter 13 plan is given res judicata effect even if the plan does not comply with the Code. Some case law suggests that the holder of a priority claim must expressly agree to have her claim treated differently from what the Code requires in order for the plan to be confirmed. This court held that if a plan is confirmed without such treatment, the confirmed plan binds the creditor, regardless of whether that creditor has objected to, accepted, or rejected the plan.

As a result, the ex-wife was bound by the terms of the confirmed plan and was only entitled to payment of \$78,000 as an allowed unsecured first priority claim for the prepetition DSO. However, the debtor's personal liability for unpaid back child support and alimony arrearages (the balance of the DSO) was not affected by a Chapter 13 discharge and couldn't be discharged in bankruptcy. The unpaid portion of the prepetition arrears, like any other nondischargeable debt, could be collected as a personal liability of the debtor. Whatever discharge the debtor received would not absolve him of the duty to pay the balance of the DSO and the interest that accrued under the applicable New Hampshire law.

It wasn't entirely clear that the debtor had a current support obligation at the time of the hearing. To the extent that the debtor had an ongoing post-petition DSOs, the confirmed plan would not, and could not affect that obligation. The ex-wife was free to petition the state court to enforce the obligation through garnishing debtor's income that was in excess of the monthly payments required by the plan or by other methods of collection. The state court could also require that the debtor pay the current support from other assets whether or not it was property of the estate.

With regard to the debtor's motion to hold the ex-wife in contempt of the confirmation order, the bankruptcy court held that the exemptions to the automatic stay were not a defense since a plan had been confirmed.

Once a Chapter 13 plan has been confirmed it becomes binding on all creditors, including holders of prepetition domestic support obligations. Collection of prepetition arrears by court proceeding was prohibited until the bankruptcy case closed or was dismissed. In this case, while the court found that while the ex-wife violated the order confirming the plan, the debtor was not entitled to damages.

**In re Jardine**, 2022 WL 16579457 (B. Ct. D. Idaho 2022). The debtor filed a chapter 7 bankruptcy petition. Because there were no assets to be used to pay debts, creditors were notified not to submit claims. However, the custodial parent submitted a claim for unpaid child support and medical expenses, as well as other debts arising from the parties' stipulation and divorce decree. The debtor did not object to the claim. The debtor received a discharge and the case was closed after the trustee filed a notice of no distribution.

The CP sought to recover these debts in state court and the debtor moved to reopen the bankruptcy to contest the claim (to avoid a res judicata effect of the claims). The CP moved for relief from the stay to continue the state court proceeding.

The Court concluded that the child support and medical expenses were domestic support obligations. The language of the divorce indicated both the unpaid child support and medical expenses were in the nature of support. The overriding public policy of § 523(a)(5) is to safeguard the enforcement of familial obligations and protect minor children from potential neglect. The CP provided sufficient evidence that debtor owed \$9,459.79 in unpaid child support and \$1,974.49 in unpaid medical expenses. A claim is deemed prima facie proof of the debt and the debtor failed to present sufficient evidence to rebut prima facie validity of creditor's claims. Because such claims constitute a domestic support obligation, the CP had an allowed, nondischargeable claim.

As to the other claims, the court lifted the stay to the extent of allowing the state court to clarify certain issues and determine the value of some debts. However, the bankruptcy court reserved for itself the determination of what was dischargeable.

**In re: Jordahl**, 555 B.R. 861 (B. Ct. S.D. Ga. 2016). The debtor's ex-wife filed a contempt petition in state court to enforce a child support order. Shortly after, the debtor filed a Chapter 13 petition. The court found that debtor was \$2615.00 in arrears on his child support payments and ordered his arrest and incarceration until he purged the contempt by full payment of the arrearage. In addition, the court awarded the ex-wife \$751.50 for attorney's fees and costs, to be paid directly to her attorney. The hearing was held after filing the petition but before confirmation of the plan (no basis for a contempt proceeding for violating the order of confirmation).

The attorney filed a claim for the fees and costs. The award of fees in connection with enforcement of support was a DSO. The debtor objected and the court sustained the objection and disallowed the claim. Because the claim was based on an order issued in a proceeding that violated the automatic stay, the order was void, including the award of attorney's fees.

A proof of claim is deemed allowed unless a party in interest objects. A timely filed proof of claim is prima facie evidence of the claim's amount and validity. The objecting party bears the initial burden of coming forward with proof to overcome the claimant's prima facie case. If the objecting party overcomes the prima facie case, the burden shifts to the creditor to prove its claim by a preponderance of the evidence unless applicable nonbankruptcy law allocates the burden of proof on the claim differently.

Actions taken in violation of the automatic stay are void and without effect. When an order is issued at a hearing that violates the stay, the order is void. The attorney argued that the debt was exempted from the stay as a DSO under the wage deduction exception and the collection from non-estate property exception. § 362(b)(2)(B), (C).

First, the attorney could not claim that the contempt was an attempt to collect from property that was not part of the bankruptcy estate. All property acquired both pre- and post-petition is property of the bankruptcy estate before confirmation of the plan. The estate under chapter 13 includes “all legal or equitable interests of the debtor in property as of the commencement of the case,” 11 U.S.C. § 541(a)(1); and “all property of the kind specified in [§ 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted,” as well as post-petition wages, 11 U.S.C. § 1306(a)(1)–(2).

After a plan is confirmed, all property not necessary to the fulfillment of the plan reverts in the debtor. 11 U.S.C. § 1327(b). At that point collection of a DSO is possible from non-estate property, but prior to confirmation there is no property that is not property of the estate.

The attorney also relied on the exemption from the stay for “the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute.” 11 U.S.C. § 362(b)(2)(C). However, this provision only applies to income withhold and does not exempt a contempt hearing in state court.

Finally, the attorney argued that she had a claim for legal work done pre-petition. However, prior to the court order awarding fees against the debtor, she had no right to payment from the debtor. Since the order issued in violation of the stay was void, there was no basis for a claim against the debtor.

**In re Kalsi**, 637 B.R. 33 (B.Ct. S. D. NY, 2022)

The former spouse of the debtor filed a Proof of Claim in the debtor’s chapter 7 case, asserting debts owed to her arising from a divorce. She asserted that these debts were except from discharge under sections 523(a)(5) (DSOs) and (a)(15) (debts arising from a divorce judgment). The estate didn’t have sufficient assets to pay all the administrative expenses and priority claims. The court had to determine which debts had priority and which were exempt from discharge.

A DSO is granted a first priority under the Code if it is owed to a spouse, former spouse or child of the debtor, or the child's parent, legal guardian or responsible relative as of the petition date. To be a DSO, the debt must: 1) be owed to or recoverable by a spouse, former spouse, or child of the debtor or the child's parent, legal guardian, or responsible relative or a governmental unit; 2) be in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit); 3) be established or subject to establishment before, on, or after the date of the order for relief in a case under the Code; and not be assigned to a nongovernmental entity.

What constitutes alimony, maintenance, or support, is determined under bankruptcy law, not State law, although the bankruptcy court is not precluded from looking at the reasoning of the well-established state laws. The bankruptcy courts can look to the intent of the state court in creating the obligation and the purpose of the obligation in light of the parties’ circumstances at that time.

The Court found that the portions of the divorce relating to child support payments and arrears, medical and dental insurance coverage for the children, spousal support arrears, and a life insurance

policy in the amount naming the children as irrevocable beneficiaries were DSOs entitled to priority and were non-dischargeable.

Section 523(a)(15) of the Code covers a broader category of marital debt than a DSO. There are three requirements for a claim to be excepted from discharge under this section:

- (1) The debt is owed to a spouse, former spouse or child of the debtor;
- (2) The debt is not a DSO; and
- (3) The obligation was incurred in a separation agreement, divorce decree or other order of a court of record.

The court found the other obligations in the judgment of divorce to be exempt from discharge in a chapter 7, including the claimant's share of proceedings for sale of marital real estate, bank accounts, escrow funds, 401K plans, personal property and jewelry, and attorney fees awarded to the former spouse. These claims were treated as general unsecured, not priority, claims.

**In re LaCroix**, 2021 WL 3668040 (B. Ct. M.D. Fl. 2021). The debtor filed a chapter 13 bankruptcy petition and listed the Florida Department of Revenue as a creditor. Florida was collecting child support arrears owed by the debtor. The Texas Office of the Attorney General was the initiating state (and therefore submitting arrears for tax refund offset) but was not listed on the creditor matrix. Florida never advised Texas of the bankruptcy and Texas did not participate in the proceedings.

After the chapter 13 plan was confirmed, Florida sent various billing statements and garnished the debtor's wages three times. Debtor's counsel contacted Florida after each collection attempt or garnishment, and Florida promptly ceased the actions. In May 2020, Texas intercepted the debtor's \$1,200 stimulus check for the child support arrears.

The debtor filed the Motion seeking sanctions against Florida and Texas for violating the automatic stay and requested an accounting. The Court entered an order which directed Texas to provide the debtor with a full accounting Texas did not comply with the Order or attend any hearing on the Motion. The Court then issued an OTSC which directed Texas to appear before the Court.

At the hearing, debtor's counsel advised the Court that the debtor had received an accounting from Texas, which had returned the stimulus check. The debtor requested that the Court sanction Texas for \$950 consisting of attorney fees incurred by the debtor related to the Motion. The debtor requested sanctions against Florida totaling \$1,522 consisting of \$1,500 attorney fees incurred relating to the garnishments and \$22 employer garnishment fees incurred by the debtor.

Texas argued sanctions should not be imposed because it did not receive notice of the debtor's bankruptcy filing until the OTSC, and upon receipt of the OTSC it returned the \$1,200 stimulus check. Texas asserted that "Jennifer Lynn LaCroix" is not listed in their records and until the Court entered the OTSC, which included the debtor's aliases, it could not determine to whom the Motion pertained.

Because the Claim is a DSO, the Florida DOR argued that any sanction would be inappropriate since the automatic stay is not in effect under 11 U.S.C. § 362(b)(2)(B) and upon notice of the garnishments, it immediately took steps to cease the garnishments.

The court didn't base its decision on violation of the automatic stay. Instead, it looked at the fact that the collection activities took place after confirmation of the plan. Section 1327 provides that "[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). A plain reading of § 1327(a) makes clear that the binding effect of a confirmed plan encompasses all issues that could have been litigated in the bankruptcy case. In this case, the confirmed Chapter 13 plan provided how the Claim would be paid. No plan provision allowed Florida or Texas to garnish wages or intercept stimulus checks.

A party seeking civil contempt sanctions for violation of a court order must establish by clear and convincing evidence:

- (1) the allegedly violated order was valid and lawful;
- (2) the order was clear, definite, and unambiguous and
- (3) the alleged violator had the ability to comply with the order.

The Court sanctioned Florida for civil contempt. Florida was a sophisticated creditor, represented by counsel and received proper notice of the proceedings in this case. The confirmation order was valid and lawful. It was also clear, definite, and unambiguous as to how the Claim would be paid. Although Florida quickly ceased the garnishment actions when notified, the court couldn't ignore that the garnishments occurred repeatedly over time.

However, Texas was not sanctioned. It received no notice of the bankruptcy. The debtor has a duty to list the name and addresses of each creditor and to complete the bankruptcy schedules accurately to provide sufficient notice. Texas could not comply with a confirmation order when it had no knowledge of the case. The Court found it credible that the Texas OAG could not locate the debtor in its records because the Motion did not contain the debtor's aliases. After Texas received notice of the bankruptcy, it took actions to correct the issue.

**In re: Little**, 634 B.R. 784 (B.Ct. E.D. Ark, 2021). The debtor failed to pay the full amount of his child support obligation prior to the filing of the bankruptcy petition. A portion of the pre-petition arrears were reduced to judgment on consent of the parties and they agreed that he would pay an additional \$70/month towards the arrears. After the debtor filed the chapter 13 petition, the child support agency filed a claim for the pre-petition arrears, listing them as a priority DSO.

The debtor also failed to make child support payments after filing his chapter 13 bankruptcy petition. The child support agency later filed a second claim for these arrears.

The debtor's final plan listed the pre-petition arrears as priority DSO claims and stated that the claims would be paid in full. In a separate section, the plan proposed to pay the pre-petition arrears reduced to judgment in the amount of \$70/month for the life of the plan. The debtor filed objections against both DSO claims. He argued that the pre-petition arrears should not be paid in full under the terms of the plan, but only paid at a rate of \$70/month. He argued that the claim for post-petition arrears was untimely filed.

A proof of claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). If an objection is filed, the court must determine the amount of such claim and must allow the claim unless

one of nine exceptions found in Section 502(b) applies. These exceptions are the sole grounds for objecting to a claim. A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. The burden of proof shifts to the objector to prove one of the exceptions. Once the objector presents evidence supporting its objection to claim, the ultimate burden of persuasion shifts to the Claimant.

The debtor didn't articulate a ground for his objection under Section 502(b). He claimed that the claim should be paid in accordance with the terms of the Agreed Judgment and the confirmed plan. He also argued that the agreement in the state court to payments of \$70/month collaterally estopped the child support agency.

The court held that pre-petition claims for DSOs are given first priority status and in a chapter 13 case, must generally be paid in full over the life of the debtor's plan, unless the creditor agrees to different treatment. 11 U.S.C. § 1322(a)(2). Pre-petition claims for child support arrears, even if the state court orders them paid at a set periodic rate, are "matured" and not subject to the exemption in section 502(b)(5).

The debtor failed to prove that the child support agency was estopped from receiving full payment of the arrears during the life of the plan by the parties' agreement to a payment plan. The court found that the debtor failed to prove collateral estoppel. Collateral estoppel bars relitigation of issues of law or fact previously litigated by a party. The elements of collateral estoppel are: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment.

The debtor failed to provide evidence about the agreement or judgment. No testimony was given about the nature of the state court proceeding surrounding entry of the Agreed Judgment, or how the Agreed Judgment came into existence. The issues at state court didn't include how much should be paid under the bankruptcy plan. Nor was there proof that the payment agreement was essential to the judgment setting arrears. Collateral estoppel applies only to determinations that are necessary to support the judgment entered in the first action.

The debtor claimed that the plan, once confirmed, limited the amount that was to be paid to \$70/month. The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not a creditor has objected to, has accepted, or has rejected the plan. 11 U.S.C. § 1327(a). An unappealed, confirmed plan is res judicata, and its terms are not subject to collateral attack. Once final, the plan represents a binding determination of the rights and liabilities of the parties as set out by the plan. The terms of a confirmed plan are binding, even if they conflict with other provisions of the Bankruptcy Code.

The debtor claimed that since the plan stated that payments on the claim would be limited to \$70/month, he did not have to pay the full amount of the arrears as required by the bankruptcy code. However, for the terms of a confirmed plan to be binding, the creditor must receive sufficient notice of the plan's treatment of its claim. When the plan's treatment of a creditor is ambiguous or lacks specificity, an issue relating to notice can arise. In this case, the court found that the plan's conflicting statements about treatment of the priority claims, including the child support arrears, were ambiguous.



The court held that the claim for post-petition arrears was untimely. In addition, under Section 502(b), the claim for a domestic support obligation was unmatured on the date of the filing of the petition. 11 U.S.C. § 502(b)(5). However, in a Chapter 13 case, the debtor must remain current on domestic support obligations that first become payable after the date of the filing of the petition. If not paid, the case may be converted or dismissed. 11 U.S.C. § 1307(c)(11).

**In re Lockhart**, 2021 WL 2593870 (B. Ct. N.D. West Va., 2021). The debtor filed a complaint alleging a violation of the automatic stay and a violation of the court's confirmation order in his chapter 13 case. He claimed that the West Virginia child support agency notified the Ohio child support agency of the status of and arrears due in the child support case when the custodial parent and child moved to Ohio and began receiving child support services there. Ohio then seized his stimulus check. He argued that this violated the automatic stay and was a violation of the confirmation order., He sought actual damages for monetary, incidental, and consequential damages and compensatory damages for emotional and mental distress, aggravation, anxiety, annoyance, and inconvenience as a result of not receiving the CARES Act stimulus payment to which he was otherwise entitled.

The court dismissed both claims. The automatic stay acts as a breathing spell and protects a debtor from any action that would interfere with the debtor's ability to effectively reorganize. However, a petition does not operate as a stay as to an action by a governmental unit to enforce the unit's police or regulatory power. 11 U.S.C. § 362(b)(4).

The police and regulatory power exception applies if the purpose of the action is to promote public safety and welfare or effectuate public policy. Specifically, the “public policy” test “distinguishes between government actions that effectuate public policy and those that adjudicate private rights.” It is well established in West Virginia that there is a public policy interest in ensuring compliance with child support orders.

The court found that West Virginia’s notification was excepted from the automatic stay under §362(b)(4). The child support agency is a governmental agency responsible for sending payments and other relevant reporting information to agencies like Ohio’s child support agency. The Court held that the mere act of reporting the status of debtor's child support obligations to an interested party does not constitute “an act” prohibited by § 362 of the Bankruptcy Code. The action was best characterized as an action which promotes public policy regarding child support payments by ensuring that the support payments reach the intended destination. Both government agencies have an interest in effectuating the support of minor children within their respective states, and communication between the two agencies is necessary to carry out their mission.

The court denied the request for a declaration of contempt for violation of the confirmed plan. Contempt is a violation of the Confirmation Order which may be remedied by the Court pursuant to § 105 of the Bankruptcy Code. In order for the court to hold a defendant in contempt, the movant must show:

- (1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
- (2) That the decree was in the movant's “favor”;

- (3) That the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and
- (4) That the movant suffered harm as a result.

The debtor failed to allege that any harm was directly caused by West Virginia. Specifically, there were no actions which could plausibly be said to have violated the terms of the confirmed Chapter 13 plan.

**In re: Lockhart**, 2021 WL 2632765 (B. Ct. N.D. West Virginia, 2021). Debtor filed Chapter 13 bankruptcy on May 19, 2017 and listed his past-due child support as a debt. The child support was being collected by West Virginia Bureau of Child Services. West Virginia filed a proof of claim which the debtor proposed to pay in full over the course of the 60-month plan. At some point post-confirmation, the child relocated to Washington County, Ohio. West Virginia notified Washington County of the debtor's child support obligation. The debtor alleged that Washington County, with knowledge of the Chapter 13 plan and confirmation order, coordinated with the U.S. Department of the Treasury to intercept a \$2,400 economic stimulus payment.

The debtor filed a complaint seeking sanctions for violating the automatic stay and for contempt in violating the chapter 13 bankruptcy plan. The debtor received a “Notice of Ohio Income Tax Refund Offset For Overdue Support” and argued that this notice constituted a separate violation of the stay. The IRS and Washington County sought dismissal on various grounds, including sovereign immunity. The court rejected their sovereign immunity defense as having been eliminated by amendments to section 106 of the bankruptcy code.

Washington County argued that the child support reporting system is automatically administered and, to a certain degree, out of the agency's control. CSEA states that under the “Treasury Offset Program” (“TOP”), arrears are required by law to be submitted to the State and any arrears owed to an obligee are then automatically reported by the state for federal tax offset. Because of this, the motion alleges, any decisions are made by the state of Ohio, not the individual counties or their agencies, and the only determination by the county is the total amount of arrearage. Washington County also argued that it is not bound by the confirmation order or, in the alternative, that the Stimulus was not property of the bankruptcy estate.

Critical to the parties’ dispute is whether the Stimulus is a tax refund or credit. By its terms, the CARES Act expressly provided that the “economic impact payment” of \$1,200.00 per person couldn’t be offset against the kinds of debts expressly identified in the Act. However, child support obligations are not one of the debts excepted from setoff. Accordingly, the stimulus payment can be garnished to pay past-due child support.

The court held that the stimulus is more appropriately characterized as a refund. The plain language of the § 362(b)(2)(F) exception means what it says—that the stay does not operate as to “the interception of a tax refund”—and that the Stimulus qualifies as a refund. As a refund, § 362(b)(2)(F) excepts the interception from the automatic stay.

Debtor argued that even if the interception of his Stimulus did not violate the automatic stay, the Notice of the offset constituted a violation on its own.

A creditor which provides notice that has an informative purpose, rather than one amounting to an attempt to collect, does not violate the automatic stay. 42 U.S.C. § 666(a)(3)(A) provides that a state shall ensure notice of an offset is sent to the noncustodial parent to ensure they are given an ability to contest it.

The facts here indicate an informative, rather than harassing purpose, and fail to amount to a violation of the stay. The closest thing to harassing language within the Notice is the statement “if you miss any further payments which add to your support debt, these amounts will also be subject to similar Ohio income tax intercepts.” This language reminds the debtor of his duty to pay but does not amount to a collection attempt. Rather, the Notice is the result of the state of Ohio complying with § 666(a)(3)(A) and ensuring that the debtor had adequate notice of the offset. This court finds within the Notice no harassing language which indicates an attempt to collect that would render it a violation of the automatic stay.

The court held that the record required further development for a ruling on contempt.

In order for the court to hold a defendant in contempt, the movant must show by clear and convincing evidence:

- (1) The existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
- (2) That the decree was in the movant's “favor:”
- 3) That the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and
- (4) That the movant suffered harm as a result.

The confirmed bankruptcy plan binds the debtor and each creditor to its terms, whether or not the creditor is provided for in the plan and regardless of whether the creditor has objected to, accepted, or rejected the plan.

There were several factual matters that are unresolved. First, neither Washington County nor the IRS had constructive knowledge of debtor's case because they were not parties to the case. The County was aware of the bankruptcy but may not have known the specific terms of the confirmation order. The extent of the IRS' knowledge was unknown. As there were factual matters in dispute the court denied defendants' motions for summary judgement and ordered further proceedings on the issue of contempt.

**In re: Lopez**, 2022 WL 1160607 (B. Ct. N.M., 2022). The CP was granted a divorce decree on default. The decree included a judgment for child support arrears and another judgment for reimbursement of the CP's property contributions to the marital home, attorney's fees and taxes, and equalization of the allocation of assets and liabilities. The CP filed claims for each judgment in bankruptcy court, characterizing them as DSOs entitled to priority. She argued that the state court judgments precluded the debtor from challenging the amount and nature of the claims, and therefore their priority and non-dischargeable status. The debtor did challenge the claims.

The court looked at the preclusive effect of the default state court judgments. Under the Full Faith and Credit statute (28 U.S.C. § 1738), a federal court must give to a state-court judgment the same

preclusive effect as would have been given that judgment under the law of the issuing State. The court therefor applied New Mexico's law regarding issue and claim preclusion.

Under the New Mexico law governing claim preclusion, a final judgment will bar subsequent litigation of not only the claims actually asserted in the first action, but also all claims arising out of the same transaction or occurrence that could have been asserted even if they were not. Claim preclusion required proof of the following elements:

1. a final judgment in an earlier action;
2. the earlier judgment was on the merits;
3. the parties in the two suits are the same; and
4. the cause of action is the same in both suits.

Under New Mexico law, issue preclusion bars relitigation of issues and facts actually litigated and applies even if the subsequent action involves a different claim. Issue preclusion requires proof of the following elements:

1. the parties in the second suit must be the same or in privity with the parties in the first suit;
2. the causes of action must be different;
3. the issue or fact must have been actually litigated in the first case; and
4. the issue must have been necessarily determined in that case.

A state court final judgment, including a judgment obtained by default, could have claim preclusive effect because claim preclusion does not have an actual litigation requirement. Under New Mexico law, default judgments do not have issue preclusive effect because issues determined by default are not actually litigated. This is the case even when, as here, the debtor had notice of the proceeding and could have appeared and litigated the issues.

However, claim preclusion does not apply to determining non-dischargeability in bankruptcy cases because non-dischargeability claims can only be asserted in connection with a bankruptcy case. The "same claim" requirement for application of claim preclusion cannot be satisfied.

The court held that the default judgment was not entitled to claim preclusive effect as to the nature of the claims (i.e., whether they were DSOs) but had claim preclusive effect to establish the total amount of the claims.

In determining the nature of a claim, the court must look beyond the labels given to the obligation by the state court to determine whether the obligation is "in the nature of ... support" and constitutes a DSO. Tenth Circuit law requires the court to conduct an inquiry into both the parties' intent and the substance of the obligation. While state courts have concurrent jurisdiction to determine whether an obligation is a DSO and state law may provide guidance on the issue, the bankruptcy court has the responsibility to make its own determination of the nature of the obligation from the facts at hand and not rely on the labels in the divorce decree. Factors relevant to the determination include the relative financial circumstances of the parties at the time of the divorce and a spouse's need for support at the time of the divorce.

Even though the child support arrears were calculated using the child support guidelines, the court had to make it's own determination of the nature of the debt, and could not rely on claim preclusion. The default judgment was not entitled to claim preclusive effect to establish the nature of the debts because the state court didn't specifically applied the factors necessary to determine whether the obligations were in the nature of support under § 523(a)(5).

The default judgment did conclusively fix the amount of the claims under the doctrine of claim preclusion. Claim preclusion bars the bankruptcy court from looking behind a state court default judgment for unpaid alimony and support to determine the amount of the obligation. Claim preclusion applied to establish the validity and amount of a claim but not its nature because the default judgment adjudicated the issue of whether there was a valid debt and the amount of that debt. debtor could not re-litigation of the amount of the debt.

**In re: Morrissey**, 2022 WL 660595 (B. Ct. D. Ut., 2022). The non-custodial parent obtained a judgement against the custodial parent/debtor in small claims court for an overpayment of child support. The debtor filed a bankruptcy petition and listed the money judgement as a unsecured debt. The plaintiff brought a motion for summary judgment for a declaration that the debt was exempt from discharge.

The court granted the motion. Although the debt was not a DSO that would be exempt under 11 USC 523(a)(5), it was exempt as a non-DSO marital debt under § 523(a)(15). To meet the requirements of § 523(a)(15), a plaintiff must prove by a preponderance of the evidence that: (1) the debt is owed to a spouse, former spouse, or child of the debtor, (2) is not a domestic support obligation as defined under the Code, and (3) was incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit. The court held that the overpayment was incurred in connection with the support provisions of the judgment of divorce.

**In re: Ojiegbe**, 512 B.R. 513 (B. Ct. D Md., 2014). The debtor filed a chapter 13 petition in January 2011 and his plan was confirmed in August 2011. In July 2011 the debtor and his wife cross-filed actions for divorce in state court. The creditor was the wife's attorney. The judgment of divorce was signed in 2012 and awarded rehabilitative alimony and child support to the ex-wife.

The debtor worked for an LLC and was the sole owner of the shares of the corporation. His ownership shares are part of the bankruptcy estate, but the LLC did not filed for bankruptcy.

The ex-wife was awarded \$13,000 in attorney's fees, payable to the creditor within 30 days. When the fees were not paid, the creditor filed a motion for entry of a judgment against the debtor for the attorney fee award, which was granted. The creditor requested that the court issue writs of garnishment against 3 bank accounts held by the debtor. At the creditor's request, the court issued a writ of execution directing the Sheriff to levy upon the property of the Judgment debtor to satisfy a money judgment at the offices of the LLC. The Sheriff's office went to the LLC and levied all the cash on hand.

The debtor filed the motion seeking sanctions for stay violations against the creditor. The parties filed cross-motions for summary judgment and opposition briefs, and the matter is now ripe for resolution.

The creditor first argued that the bankruptcy court should abstain from issues stemming from a state domestic relations case. 28 U.S.C. § 1334 (c)(1) allows a bankruptcy court to abstain in the interest of justice, or the interest of comity with State courts or respect for State law. The court declined to abstain, as the protections afforded by the automatic stay are a critical component of bankruptcy. The purpose of the automatic stay, in addition to protecting the relative position of creditors, is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding. Further, the debtor was not attempting to relitigate the state court award.

A violation of the automatic stay occurs when a creditor takes any act to obtain possession or control of property of the estate or takes any act to create, perfect, or enforce any lien against property of the estate. 11 U.S.C. §§ 362(a)(3)-(a), (4). A willful violation of the automatic stay subjects the creditor to liability for damages. § 362(k)(1). Willfulness does not require the specific intent to violate the automatic stay, only that the creditor knew of the stay and intentionally committed an act in violation of the stay.

An action does not violate the automatic stay if it is not directed towards property of the bankruptcy estate. The bankruptcy estate encompasses “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Assets held by a separate legal entity are not property of a debtor's estate, even if the debtor owns all the stock or interest in the entity. In unusual situations where there is such identity between the debtor and the third-party that the debtor may be said to be the real party in interest, the stay might apply. The levy against the LLC did not violate the stay.

Garnishment of bank accounts which are property of the estate, with knowledge of the bankruptcy, would be a violation of the stay unless the action was exempt from the stay. The creditor argued that the garnishment was exempt because the underlying debt was a DSO. The court agreed that the fees were awarded in connection with the judgment of divorce and the award of alimony to the ex-wife. There was no property settlement or disposition of marital assets made in the divorce, so the fee was entirely a DSO. The court held that the income garnishment exception for DSOs (§ 362(b)(2)(C)) did not apply to bank accounts. The remaining exception is that DSO's may be collected from property which is not property of the estate.

The creditor argued that only post-petition income needed to fund the plan is property of the estate. However, in this case, the confirmed plan stated that title to the debtor's property would revert in the debtor when the debtor was granted a discharge. The order confirming the plan stated that the property of the estate would not vest in the debtor until the debtor was granted a discharge or the case was dismissed or otherwise terminated. By operation of § 1306(a)(2) and under the terms of the confirmed plan, all post-petition earnings were property of the estate. In addition, the estate in Chapter 13 includes all legal or equitable interests of the debtor in property at the commencement of the case as well as assets acquired after the commencement of the case. §§ 541(a)(1) and 1306(a)(1)-(2).

One of the accounts was not listed in the debtor's schedule because it was opened post-petition. It did not contain exempt funds and was therefore entirely property of the estate. The creditor violated the stay by levying on the account and the court ordered a hearing on damages.

The other 2 accounts contained exempt funds (i.e., exempt from creditors under state law) at the time the petition was filed. There was an issue of fact as to whether any funds in the accounts retained their exempt nature. This issue precluded summary judgment and the court set the matter for trial.

**In re: Ojeigbe**, 539 B.R. 474 (B. Ct. D. Md., 2015). (Background for this case is found in the summary of *In re: Ojeigbe*, 512 B.R. 513). The bankruptcy court held a hearing to determine whether 2 bank accounts garnished by the creditor for a DSO debt were property of the estate. The court also determined the damages for the violation of the automatic stay. After the hearing the court concluded that 2 of the accounts were property of the estate and the creditor had violated the stay.

After the creditor garnished debtor's bank accounts, his attorney asked that she unfreeze the accounts and cease all attempts to collect the post-petition debt. The creditor did release the bank accounts but did not concede that the collection of the DSO violated the stay. The debtor sought damages for bank fees, attorneys fees, and for emotional and punitive damages. The court awarded the court awarded bank fees of \$255 and attorneys fees in an amount to be determined (the debtor's counsel had to separate the hours worked between the arguments won and those lost).

The Bankruptcy Code provides that an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages. § 362(k)(1). The award of actual damages is mandatory but must be proved by a preponderance of the evidence and must be founded on concrete, non-speculative evidence

Actual damages include lost time damages, out-of-pocket expenses, and emotional damages. The actual damages suffered by the debtor were \$255, representing the bank fees incurred to remove the garnishment of the accounts.

A debtor may recover emotional damages for significant harm if they demonstrate a causal connection between the harm and the violation of the automatic stay. Claims for fleeting or trivial emotional distress are not compensable. To prove compensable damage for emotional distress the debtor must: (1) suffer significant harm; (2) clearly establish the significant harm; and (3) demonstrate a causal connection between that significant harm and the violation of the automatic stay. Unless the creditor's conduct is particularly egregious, where harm would be readily apparent, the claimant must establish emotional distress with corroborating evidence, such as expert testimony, medical testimony, or credible testimony from non-experts such as family members.

In this case, there was insufficient evidence that the debtor experienced significant emotional harm to warrant an award of emotional distress damages. Much of the debtor's distress resulted from the writ of execution on the LLC, which did not violate the automatic stay.

Section 362(k)(1) authorizes the court in its discretion to grant punitive damages in appropriate circumstances. Appropriate circumstances ordinarily means that the creditor has demonstrated egregious, vindictive, or intentional misconduct. Some courts use maliciousness or bad faith as the guide. Others look for an arrogant defiance of federal law. In all cases punitive damages usually require more than mere willful violation of the automatic stay. In this case the court did not find that the creditor's actions warranted punitive damages.

**In re: Clark**, 921 F.3d 566 (5th Cir. 2019). The debtor had children with 2 custodial parents, each of whom applied for child support enforcement services from the State of Illinois. The NCP filed a Chapter 7 bankruptcy. The NCP did not list one CP in the matrix of creditors and gave an incorrect address for the other, so only the IV-D Agency received notice of the case. The IV-D Agency didn't file proof of claims for the child support arrears (approx. \$300,000) owed to the CPs. The Chapter 7 Trustee marshalled the assets and sent the creditors notice of his proposed distribution of the \$71,000, including the IV-D Agency. The money was distributed to the five priority creditors who had filed timely proofs of claim.

When the CPs found out about the bankruptcy case, they contacted the IV-D Agency, which then filed proofs of claim for the child support arrears. The CPs were not allowed to participate in the distribution of assets because they were filed after the claims bar date. They argued that their claims should have been treated as timely because the Chapter 7 Trustee failed to give them notice of the bankruptcy. The bankruptcy court rejected this argument on grounds that the IV-D Agency, not the Trustee, had withheld notice of the bankruptcy filing from them. The district court affirmed, and the custodial parents appealed.

The Fifth Circuit held that the IV-D Agency was the creditor entitled to notice of the bankruptcy filing. The CPs authorized it to collect the arrears for them. The proofs of claim were filed on behalf of the IV-D agency. Payments were to be made through the Illinois SDU. The court held that the two custodial parents were not entitled to notice of the bankruptcy case, and that the Trustee's Final Report and Distribution was not deficient by not being sent to them.

**In re Rivera Guzman**, 2018 WL 3032862 (B. Ct. D. P.R., 2018). An individual Chapter 13 case can be dismissed for failure to pay post-petition child support under Section 1112(b)(4)(P). The child support agency can file a motion to dismiss the case or to convert it to Chapter 7. The bankruptcy court can do either or has the option of appointing a Chapter 11 Trustee, whichever would be in the best interests of creditors and the estate. The debtor had failed to pay post-petition support and educational expenses. There was also ongoing litigation in the divorce proceeding regarding division of the marital property. Under these circumstances, the bankruptcy court dismissed the case.

**In re: Rodriguez**, 367 Fed. Appx. 25 (11th Cir., 2010). This case was decided under pre-BAPCPA law. The debtor filed a petition for bankruptcy protection under chapter 13 and the bankruptcy court confirmed his proposed plan. The plan included payment of child support arrears. Afterwards, the Florida child support agency sent 3 letters seeking to collect child support. In response to these letters, the debtor filed a motion alleging a stay violation and contempt against the State in the bankruptcy court, seeking attorney's fees and punitive damages against the State for sending the letters.

The bankruptcy court held that the State's actions did not violate the automatic stay but granted debtor's motion for contempt. The bankruptcy court didn't award punitive damages but granted attorney's fees. In addition, the court imposed a fine against the State of \$10,000 for each of the three stay violations but held that the State could avoid this fine by not sending any more letters.

Florida appealed and the district court affirmed. Florida appealed to the circuit court which also affirmed.

The circuit court held that the State did not violate the automatic stay provisions of 11 U.S.C. § 362(a) because of the exceptions to the stay for support obligations. § 362(b)(2)(B) excepts "the collection of



a domestic support obligation from property that is not property of the estate.” Pursuant to 11 U.S.C. § 1327(b), after the plan was confirmed, all of the debtor’s property not necessary to fulfill the requirements of the plan was revested with the debtor as a matter of law. 11 U.S.C. § 1327(b). Therefore, after confirmation, the property was “not property of the estate” and subject to collection for child support under the § 362(b)(2)(B) exception.

However, Florida’s actions were in violation of the terms of the confirmed plan and Florida was properly held in contempt. The bankruptcy code provides that: “The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.” Title 11 U.S.C. § 1327 (a). Florida violated the confirmation order by attempting to collect arrears that were to be paid under the plan.

Florida argued that the bankruptcy court should have abstained from getting involved in this domestic relations issue, a matter normally left to the states. The Circuit court held that while historically domestic relations belong to the laws of the states, Congress intended for the federal courts, through the Bankruptcy Code, to address the payment of domestic support obligations. The Code provides for the payment of DSOs, as a priority, under the debtor's plan.

The State argued that Eleventh Amendment immunity protected it from liability. The court rejected this argument and held that, once the State filed its proof of claim, it waived its sovereign immunity as a matter of law.

**In re Schall**, 2019 WL 1224599 (N.D. Ga. B. Ct., 2019). The custodial parent/creditor claimed that certain debts arising from the parties’ divorce were domestic support obligations (DSOs) and therefore non-dischargeable. The debts were for the payment of the child’s college expenses, purchase of a car for the child, payment of a student loan, and a cash settlement.

DSOs are exempt from discharge under Section 523(a)(5). Equitable distribution debts are non-dischargeable under Section 523(a)(15). In determining whether a debt qualifies as DSO, courts are not bound by the labels used by the parties but examine whether the obligation is actually in the nature of support. A debt may be in the nature of support if at the time of its creation the parties intended the obligation to function as support or alimony. The court looked at 8 factors or characteristics of the debt to analyze of the nature of these debts.

The factors are:

1. The language of the Settlement Agreement or judgment. Although the parties’ labels may not be binding, they are relevant to the parties' intent;
2. The parties’ relative financial strength;
3. The parties' treatment of the property division in the Settlement Agreement as it impacts parent or child's need for ongoing support;
4. Whether an obligation ends upon marriage or death;
5. The frequency and number of payments;
6. Whether an agreement waives other support rights

7. Whether the debts are subject to modification and enforcement in state court; and
8. How the obligation is treated for tax purposes.

Based upon the undisputed facts in this case, the college expense payments and the car purchase were in the nature of non-dischargeable DSOs. While the cash payments to student loan debt were a closer call, they were clearly “incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit” and therefore not dischargeable under Section 523(a)(15).

**In re Siner**, 2023 WL 2747196 (B. Ct. N.D. Ill., 2023). The debtor raised an objection to the claim of his ex-wife, which classified certain marital debts as priority DSOs. There was no dispute about the amount due.

In the parties’ settlement agreement (incorporated into the divorce decree) they each waived spousal support forever. The claim was based on obligations from the section entitled “Property Settlement.” The debtor was to keep the house and pay the wife \$26,000 within 60 days. Similarly, he was to keep the Mercedes and pay her \$400. If not paid the money would come from the sale of the house and car. He was also required to pay \$20,000 from his retirement plan.

Debtor’s chapter 13 plan proposed to pay a total of \$3000 to all general unsecured creditors. The ex-wife’s claim was for \$52,900.

A DSO is a claim in the nature of maintenance or support to a spouse, former spouse, or child of the debtor or such child’s parent, without regard to whether such debt is expressly so designated. It is a priority debt that must be paid in full under the plan. Whether or not the debt is a DSO is a matter of federal bankruptcy law, rather than state, law and the court is not bound by the labels attached by the state court to the obligation. The parties’ intent that controls whether an obligation is in the nature of alimony, maintenance, or support or rather is in the nature of a property settlement.

Where there is no settlement agreement between the parties, the court looks at the intent of the state court by analyzing:

- the language and substance of the judgment in the context of the surrounding circumstances
- the parties’ financial circumstances at the time of the judgment
- the function served by an obligation at the time of the judgment

In this case the parties’ agreement provided strong evidence of their intent and nothing in the Divorce Decree suggested that the obligation was in the nature of alimony, maintenance, or support. Each party waived maintenance and was forever barred from receiving maintenance. In addition, the labels used for the obligation unequivocally described the obligation as a division of property. Support and maintenance were treated in separate articles. The amount of the debt was based on the equity in the property and the value of the car, not the parties’ income or financial circumstances.

**Sklar v. Grassi**, 2020 WL 3088798 (B. Ct. D. N.J., 2020). The debtor/child support obligor was beneficiary of an inheritance. He owed Ms. Grassi child and spousal support. In 2018, the court ordered the administrator of the probate estate to hold all of debtor’s disbursements from the

inheritance in escrow and release them to Ms. Grassi for the unpaid support. No other disbursements were to be made.

The debtor then filed a Chapter 7 bankruptcy petition. The inheritance (\$50,000) was listed in the schedules and not claimed as fully exempt. Ms. Grassi asserted an entitlement to a portion of the inheritance for unpaid support.

Without seeking leave of the Bankruptcy Court, Ms. Grassi filed a motion in the NJ Court seeking certain relief regarding the inheritance. The NJ Court restrained the executor from releasing any funds to the debtor and ordered the executor to release the funds to Ms. Grassi's attorney in satisfaction of unpaid spousal support. Instead, the executor transferred all the funds to the Probate department.

The trustee argued that the funds were property of the bankruptcy estate and therefore the executor violated the automatic stay. He asked for sanctions and that the executor reimburse the bankruptcy estate.

The bankruptcy court held that the funds were not property of the estate but belonged to a third entity: the probate estate. Under NJ law, the decedent's property is held by the probate estate until creditors and administrative expenses are paid. Heirs or distributees have a contingent interest in the form of a potential inheritance of any remaining proceeds in the decedent's estate after satisfaction of decedent's creditors and administration in the probate court. The executor had not completed administration of the probate estate at the time that the debtor filed his bankruptcy petition.

NJ law requires payment of all child and spousal support debts as part of the administration of the estate. The arrears are a lien on estate property, and no distribution can occur until they are paid. The debtor's contingent interest in the inheritance was subject to and diminished by this statutory lien. Ms. Grassi's interest would not vest until the estate was fully administered. As a result, the inheritance was not vested at the time of the bankruptcy and was not property of the estate. The automatic stay did not apply in this situation.

**Virginia Department of Social Services, Division of Child Support Enforcement v. Webb**, 908 F.3d 941 (4th Cir. 2018). If the Chapter 13 Trustee is holding funds that have not been distributed to creditors when the bankruptcy case is dismissed, the IV-D agency cannot collect those funds to pay the debtor's child support debt. Any money being held by the Chapter 13 Trustee and not yet distributed must be returned to the debtor after the bankruptcy case is dismissed.

**In re Wohleber**, 596 B.R. 554 (B.A.P. 6th Cir. 2019). The parties' judgment of divorce required the debtor to pay a property settlement judgment to his ex-wife by a date certain. When he failed to pay on time, his ex-spouse filed a petition for civil contempt in the state court. The court found the debtor in contempt and scheduled a sentencing hearing. The debtor filed for bankruptcy protection and advised the court and the ex-wife. The state court judge researched whether going forward with the sentencing was a violation of the automatic stay under 11 U.S.C. § 362.

The state court judge erroneously concluded that the hearing was not stayed. Prior to the sentencing, the judge met with counsel in chambers, invited them to submit any authority on the stay issue, and gave the parties time to reach an agreement. The ex-spouse and her counsel declined to negotiate for fear of violating the automatic stay by trying to collect a debt. The debtor's attorney did not submit any authority to contradict the Judge's ruling. At the hearing, the debtor was sentenced to 10 days in jail

which he could purge by payment of the property settlement amount. After several days in jail, the debtor was released when the parties agreed that the sentence should be held in abeyance pending a decision in the bankruptcy court. Nearly three years later in a subsequent Chapter 13 bankruptcy case, the debtor filed an action seeking damages for violation of the automatic stay against his ex-spouse, her attorney, and the state court judge.

The bankruptcy court found no stay violation because the ex-spouse and her lawyer did not negotiate payment terms with the debtor or otherwise attempt to collect the debt. The bankruptcy judge rejected the debtor's argument that there was an affirmative duty to stop the sentencing hearing and the punishment for civil contempt. The court reasoned that since the debtor had already been found to be in contempt the only thing the defendants could have done was to have waived the payment obligation entirely. This was not required to avoid violating the stay. The debtor appealed.

The Sixth Circuit Bankruptcy Appellate Panel (BAP) reversed. The BAP found that both proceeding with the sentencing hearing and confining the debtor were both stay violations. While a state court has jurisdiction to determine if their own proceeding is stayed, if state courts proceed in error, their actions violating the stay are invalid. Although the creditor and her attorney relied on the state court ruling, "litigants proceeding in this way "proceed[ ] at [their] own risk" and sanctions may be assessed. The BAP held that continuing the proceeding to collect the property division award was stayed. The BAP found that the criminal prosecution exception to the automatic stay did not apply because the proceeding was based in civil contempt. The BAP held that once the debtor filed his bankruptcy case, the defendants should have sought relief from the automatic stay in the bankruptcy court or sought a determination that the stay did not apply.

The creditor and her attorney argued that because they did nothing to further the state court's sua sponte actions, they were not in violation of the stay. The BAP held that "a creditor cannot sit idly by, appear at a collection proceeding, and allow the debtor to be jailed because he did not pay the judgment creditor's dischargeable debt. The burden was on the creditor and her legal counsel to stop the collection proceeding once the bankruptcy was filed."

The court determined that the CP and her attorney had an affirmative duty to prevent the sentencing hearing and the debtor's confinement. However, because they did not have an opportunity to present evidence to the bankruptcy court, the matter was remitted to allow them to present evidence on whether they took affirmative action to prevent the sentencing hearing and debtor's incarceration from occurring. If the bankruptcy court found that they did not meet their duty to take affirmative action to prevent the violation of the automatic stay, the bankruptcy court would have to determine damages.