

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	BANKRUPTCY
	:	98-35663
KENNETH A. GREENE	:	
Debtor.	:	ADV. NO. 98-831
<hr/>		
KENNETH A. GREENE	:	CIVIL ACTION
Appellant,	:	
v.	:	
	:	
ICILYN A. WILSON-GREENE	:	
Appellee.	:	NO. 99-1840

MEMORANDUM

Reed, S.J.

September 3, 1999

This is an appeal by appellant Kenneth Allen Greene (“Greene”) from an order of the United States Bankruptcy Court for the Eastern District of Pennsylvania dismissing his Chapter 7 bankruptcy case for lack of jurisdiction. This court has appellate jurisdiction pursuant to 28 U.S.C. § 158(a). For the reasons that follow, I will affirm.

Also before the Court is a petition by the appellant Greene for mandamus (Document No. 4) and an emergency petition to stay state court proceeding presently pending (Document No. 8). I will deny the petition for a stay and dismiss the petition for mandamus as frivolous.¹

I. Background

¹Both the appellant and appellee are acting *pro se*. Appellant Greene, a lawyer, filed a comprehensive brief as well as a supplemental brief addressing all the issues he raises on appeal. Because a briefing schedule was not originally issued when this appeal was filed, this Court set a briefing schedule by Order dated July 22, 1999, giving appellee Icilyn Wilson-Greene until September 13, 1999 to file a response. Because appellant Greene has petitioned for a writ of mandamus and an emergency hearing on his petition to stay the state court proceedings against him, all of which are linked to this appeal, the Court has fully considered his brief and is issuing this Memorandum and Order post haste to facilitate the resolution of this case and the associated petitions. In light of the result reached by this Court, appellee’s due process rights have not been compromised by issuing this Memorandum and Order prior to her response.

Greene filed a five count complaint in bankruptcy court, seeking “to determine the dischargeability of a child support obligation entered in state court, but made in a manner inconsistent with 42 U.S.C. § 666(a)(5)(D) and (G) pursuant to 1 U.S.C. § 523” and bringing additional state law claims. (Document No. 7, Supplemental Record on Appeal, Tab 11). At the heart of the complaint are claims arising from what Greene believes to be a wrongful determination by the state court that he is the presumptive father of Icilyn Wilson-Greene’s child, Kenneth Jr., and that Greene is therefore liable to support him. Count one of the complaint sounds in common law fraud and alleges that the appellee, Icilyn Wilson-Greene (“Wilson-Greene”), fraudulently induced Greene to marry her based upon her pregnancy. Count two also sounds in common law fraud and alleges that Wilson-Greene misrepresented the facts regarding the parties’ sexual relationship in testimony before the Honorable Jerome Zaleski on December 13, 1993, in order to induce the Court to find the presumption of paternity applies and to refuse to order genetic blood testing to determine paternity. Count three sounds in breach of contract and alleges that when Wilson-Greene filed a complaint against Greene for child support, she breached a prenuptial agreement to not seek child support at any time. Count four alleges that Greene’s child support obligations are dischargeable pursuant to § 523(a)(5). Count five alleges violations of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law by reason of Wilson-Greene’s pursuit of contempt in connection with various orders of the state court requiring him to make support payments after his bankruptcy petition was filed.

On February 5, 1999, the Honorable Diane Weiss Sigmund ordered Greene to show cause why the complaint should not be dismissed. In so doing, the bankruptcy court raised several issues including, standing, abstention, *res judicata* collateral estoppel and failure to state a claim.

Although Greene filed a motion for summary judgment in the interim, he choose not to file a responsive legal brief addressing the issues catalogued in the Judge's February 5, 1999 Order, when invited to do so by Judge Sigmund. On March 5, 1999, Judge Sigmund issued a Memorandum and Order dismissing the complaint.

Greene has now appealed the decision of the bankruptcy court. Nevertheless, he has continued to file motions in the bankruptcy court. The bankruptcy court has denied these motions and ordered Greene to "cease filing pleadings in this case." Greene subsequently filed with this Court a petition for a writ of mandamus seeking an order that the bankruptcy court "refrain from entering any orders during the pendency of this appeal" for lack of jurisdiction until it regains jurisdiction after the resolution of this appeal. (Document No. 4).

In addition, Greene has filed a petition for a stay or temporary restraining order to prevent the state court from enforcing his child support obligations. (Document No. 8). In particular, Greene seeks to stay the enforcement of a recently issued bench warrant for his arrest. Greene appears to hold the misconceived notion that the automatic bankruptcy stay remains in force after he has been discharged and the property of the estate has been abandoned.

II. Standard of Review

Sitting as an appellate court in a bankruptcy case, the district court reviews the bankruptcy court's legal determinations de novo, its findings of fact for clear error and its exercise of discretion for abuse thereof. In re Trans World Airlines, Inc., 145 F.3d 124, 130-31 (3d Cir. 1998).

III. Discussion

Although the bankruptcy court addressed issues of standing with respect to Counts one, two and three as well as the issue of collateral estoppel with respect to the discharge and violation of the automatic stay, the bankruptcy court ultimately abstained from assuming jurisdiction pursuant to 28 U.S.C. § 1334(c)(1). In re Greene, 1999 WL 138905, at *7-*9 (Bankr. E.D. Pa. Mar. 5, 1999) (“I turn now to the causes of action pled in the Complaint to address whether there is, without regard to the preclusion issues discussed above, any basis to assume jurisdiction of any part of this adversary case. I easily find there is none.”).

The complaint principally raises non-core issues of family law as well as non-core issues of contract and tort law. In addition, the bankruptcy court found that the only core issues, dischargeability and violation of the automatic stay, are “inextricably intertwined with the predominant claim of the Plaintiff that the State Court erred in entering an order requiring him to support Kenneth Jr.” In re Greene, 1999 WL 138905, at *4. Accordingly, the bankruptcy court determined that principles of discretionary abstention dictated that these issues not be adjudicated in the bankruptcy court. Id.

Abstention by a federal court in a bankruptcy proceeding is authorized by 28 U.S.C. § 1334(c). Permissive or discretionary abstention under § 1334(c)(1) may be raised by the court *sua sponte*² Matter of Gober, 100 F.3d 1195, 1207 n.10 (5th Cir. 1996). Under § 1334(c)(1), courts have broad discretion to abstain from deciding either core or non-core issues, if the

²Accordingly, Greene’s argument that bankruptcy judge did not have the power to act *sua sponte* and, therefore this Court should reverse the decision of the bankruptcy court, is without merit. See Matter of Gober, 100 F.3d at 1206 n.10; In re Best Receptions Sys., Inc., 220 B.R. 932, 952 (E.D. Tenn. 1998). Similarly, Greene’s contention that the bankruptcy court should have issued a report and recommendation instead of issuing an Order dismissing his claims is without merit. In re Holtzclaw, 131 B.R. 162, 164 (E.D. Cal. 1991) (absent a statutory limitation on appellate review, a bankruptcy judge may issue a final order with regard to discretionary abstention notwithstanding bankruptcy rule 5011(b) requiring a report and recommendation.).

interests of justice, comity or respect for state law so require. 28 U.S.C. § 1334(c)(1); In re Siragusa, 27 F.3d 406, 408-09 (9th Cir. 1994) (bankruptcy court did not abuse its discretion by deferring in the interest of comity to the state court as to whether payments to creditor-wife were dischargeable or rather, in the nature of alimony and, therefore, not dischargeable); In re Thaggard, 180 B.R. 659, 663-64 (M.D. Ala. 1995) (bankruptcy court did not abuse its discretion in abstaining from determining whether debtor-husband's financial obligations to creditor-wife qualify as dischargeable debts or whether enforcement violated automatic stay). The decision whether to abstain is within the sound judicial discretion of the bankruptcy judge. In re Thaggard, 180 B.R. at 663.

Courts have applied a number of factors to determine whether abstention is appropriate. See In re Argus Group 1700, Inc., 206 B.R. 737, 751 (Bankr. E.D. Pa. 1996), aff'd, 206 B.R. 757 (E.D. Pa. 1997). These factors include: (1) the effect or lack thereof on efficient administration of the estate; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of applicable state law; (4) the presence of a related proceeding commenced in state court or other non- bankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than the form of an asserted "core" proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; and (11) the presence of non-debtor parties. Id. (citing In re Milford Group, Inc., 164 B.R. 892, 898 (Bankr. M.D. Pa.1993)).

The factors relevant here weigh heavily in favor of discretionary abstention.

The bankruptcy court correctly recognized that issues of paternity and support are matters of family law which are by tradition within the domain of the states and that state courts are the appropriate forum in which to decide them. Among the reasons for abstention in such cases are: the strong state interest in matters concerning domestic relations; the competence of the state courts in settling family disputes, the possibility of incompatible federal and state court decrees in cases of continuing judicial supervision by the state, and the problem of congested dockets in federal courts. Cf. Carver v. Carver, 954 F.2d 1573, 1578 (11th Cir.), cert. denied, 506 U.S. 986 (1992). The bankruptcy court further recognized that substance of Greene's dischargeability claim would require it to render a paternity decision, which would take it "deep into th[e] realm of domestic relations law." In re Greene, 1999 WL 138905, at *9. The record also reflects that the presumption of paternity was applied against Greene and that an order of support was entered. Implicit in the entry of a support order is a finding of paternity. Thus, the issue has been decided in state court. Finally, the bankruptcy judge found that "it appears fairly clear that [Greene]'s attempt to litigate these matters in bankruptcy court has an element of forum shopping Bringing these same issues in new packaging is merely an end run in order to re-litigate in a new forum." In re Greene, 1999 WL 138905, at *9. This finding was not clearly erroneous.

With respect to count five and whether pursuing a contempt proceeding was a violation of the automatic stay, the bankruptcy court noted that, although the state court did not have jurisdiction to grant relief from the stay, it had concurrent jurisdiction with the bankruptcy court to determine the scope of the stay. In re Greene, 1999 WL 138905, at *9 n.15; see also Brock v. Morysville Body Works, Inc., 829 F.2d 383, 387 (3d Cir. 1987) (applicability of stay is within

the competence of both the court in which litigation is pending and the bankruptcy court supervising the reorganization); Janis v. Janis, 179 Misc.2d 199, 201-02 (N.Y. Sup. Ct. 1998) (state court decided whether proceeding before it is subject to automatic stay). The bankruptcy court also found that the state court, after being put on notice that Greene had filed bankruptcy, decided that the stay was not applicable to the contempt proceeding and, in fact, did not stay the proceeding. This finding was not clearly erroneous.³ Nor was the decision of the bankruptcy court to abstain on this issue an abuse of discretion. See In re Thaggard, 180 B.R. at 663-64.

Thus, I hold that the bankruptcy court did not abuse its discretion in deciding to abstain from exercising jurisdiction pursuant to 28 U.S.C. § 1334(c)(1). Because this issue is dispositive, I need not reach the issue of standing, collateral estoppel or *res judicata*

In addition, the petition of Greene for a stay or temporary restraining order will be denied. In his petition, Greene seeks a declaration that Wilson-Greene, by seeking to enforce a child support order, has violated the automatic bankruptcy stay that “was and is in effect.” Greene also seeks to prevent Wilson-Greene from seeking enforcement during the pendency of this appeal. His argument with respect to a violation of the automatic stay that “was” in effect simply reiterates his claim in the complaint that was dismissed by the bankruptcy court and is the subject of this appeal. As discussed above, this Court will affirm the bankruptcy court’s decision to dismiss the complaint. Greene also appears to be under the misconception that a bankruptcy stay

³Greene has twice before filed for bankruptcy. In each of the earlier cases, Greene petitioned the bankruptcy court for a TRO in connection with a contempt proceeding pending against him in the Pennsylvania Court of Common Pleas. In each case, the bankruptcy judge denied the TRO because support arrears can be enforced against non-estate property, such as post-petition earnings, and because Greene was unable to show that the hearing placed the estate in imminent danger of irreparable harm. In addition, the bankruptcy judge deferred to the state court to determine the scope and applicability of the automatic stay with respect to the efforts of his wife to collect child support. In re Greene, 1999 WL 138905, at *1.

is in effect. The record shows that Greene was discharged from his Chapter 7 bankruptcy on July 2, 1999. (Bankr. Document No. 51). Furthermore, on July 27, 1999, an order of abandonment was issued by the bankruptcy court. Thus, by operation of law, the automatic stay has been extinguished. 11 U.S.C. § 362(c)(1) & (2)(C); In re Burke, 198 B.R. 412, 416 (Bankr. S.D. Ga. 1996) (automatic stay expires upon discharge); In re Trevino, 78 B.R. 29, 37 (M.D. Pa. 1987) (stay continues until property is no longer property of the estate, i.e., has been abandoned, or stay remains in effect only until time case is closed, dismissed or discharged). Moreover, an appeal does not revive the automatic stay. F.R.B.C. 8005; Cf., In re Burke, 198 B.R. at 416 (reopening does not reinstate automatic stay); In re Trevino, 78 B.R. at 37 (once automatic stay has been terminated no statutory provision authorizes continued imposition of automatic stay). Furthermore, Greene's argument that any state action should be stayed until a decision is made with respect to the instant appeal is without merit. Indeed, it has been mooted because a decision has been reached and the dismissal of Greene's complaint by the bankruptcy court is herewith affirmed.

Finally, the petition for mandamus will be dismissed as frivolous. After the bankruptcy court dismissed his complaint and after Greene filed this appeal, Greene filed a motion to amend the complaint and an amended complaint in the court below. (Document No. 7, Supplemental Record on Appeal, Tab 9, Document Nos. 22 & 25). The bankruptcy court denied the motion to amend the complaint and struck the amended complaint because there was no adversary case pending. (Document No. 7, Supplemental Record on Appeal, Tab 9, Document No. 28). The bankruptcy court further ordered Greene to cease filing pleadings in this case. Greene now seeks a mandamus asking this Court to order the bankruptcy court to cease ruling on all matters in the

bankruptcy court pending resolution of this appeal. As a basis for the mandamus, Greene argues that, having dismissed the adversary case and pending the resolution of this appeal, the bankruptcy judge did not have jurisdiction to order him to cease filing pleadings. I independently find that Greene's petition for mandamus is groundless and that his litigation activity in the bankruptcy court after dismissal of his complaint have been for an improper purpose, i.e., to delay and harass. Indeed, the bankruptcy court in its April 16, 1999, opinion denying in forma pauperous status found that Greene's litigation activities in this action have been for the same improper purpose. (Document No. 7, Supplemental Record on Appeal, Tab 25, pg.6-7).

IV. Conclusion

Based on the foregoing, I will affirm the judgement below. In addition, I will deny Greene's petition for a stay and dismiss his petition for mandamus as frivolous. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	:	BANKRUPTCY
	:	98-35663
KENNETH A. GREENE	:	
Debtor.	:	ADV. NO. 98-831
<hr/>		
KENNETH A. GREENE	:	CIVIL ACTION
Appellant,	:	
v.	:	
	:	
ICILYN A. WILSON-GREENE	:	
Appellee.	:	NO. 99-1840

ORDER

AND NOW, this 3rd day of September, 1999, upon consideration of the brief of appellant Kenneth Allen Greene (Doc. Nos. 2 & 3), as well as the entire record, (Doc. Nos. 1-9), for the reasons set forth in the foregoing memorandum, it is hereby **ORDERED** that the order of the Bankruptcy Court dated March 5, 1999 dismissing appellant's complaint is **AFFIRMED**.

IT IS FURTHER ORDERED that the petition for a stay of state court proceedings (Document No. 8) is **DENIED**.

IT IS FURTHER ORDERED that the petition for mandamus (Document No. 4) is **DISMISSED AS FRIVOLOUS** and, without further Order of this Court, appellant Greene shall make no further filings in this adversary proceeding in the bankruptcy court or in this Court except for appeal papers or papers ancillary to an appeal to the United States Court of Appeals for the Third Circuit.

IT IS FURTHER ORDERED that the clerk of court shall not, without further Order of this Court, receive for filing or docketing in this case any papers or pleadings other than appeal

papers or papers ancillary to an appeal to the United States Court of Appeals for the Third Circuit.

LOWELL A. REED, JR., S.J.