

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**



IN RE:

**CHRISTOPHER D. MARKLE,

Debtor.**

**Case No. 04-13661-M
Chapter 13**

ORDER REGARDING APPLICATION FOR COMFORT ORDER

THIS MATTER comes before the Court pursuant to the Application for Comfort Order (the “Application”) filed by Christopher B. Markle, Debtor herein (“Debtor”). In the Application, Debtor, ostensibly on behalf of a state court judge, asks this Court to enter an order which states that the entry of a decree of divorce by a state court of competent jurisdiction does not violate the stay provisions outlined in § 362 of the United States Bankruptcy Code.¹ Pleadings such as the Application are becoming increasingly common in this Court. As a matter of law, they are unnecessary. It is the hope of this Judge that the entry of this Order will put the matter to rest once and for all.

Jurisdiction

The Court has jurisdiction over this bankruptcy case pursuant to 28 U.S.C.A. § 1334(b). Reference to the Court of this bankruptcy case is proper pursuant to 28 U.S.C.A. § 157(a). Issues relating to the scope of the automatic stay are core proceedings as contemplated by 28 U.S.C.A. § 157(b)(2)(G).

¹ Unless otherwise noted, all statutory references are to sections of the United States Bankruptcy Code, 11 U.S.C.A. § 101 *et seq.* (West 2006). All other references to federal statutes and rules are also to West 2006 publications.

Background

Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on June 25, 2004. Although the Debtor was married to Janet L. Markle (“Ms. Markle”) at the time he filed the bankruptcy case, she did not join in the case as a joint debtor. Based upon a review of the bankruptcy petition, schedules, and the claims register in this case, it appears that the debts and property dealt with in the bankruptcy case were solely the debts and property of the Debtor, and not Ms. Markle. A plan was confirmed in this case on November 3, 2004.² The plan has since been modified, and the case remains pending.

On January 30, 2006, Ms. Markle filed a petition for divorce against the Debtor in the District Court in and for Tulsa County, Oklahoma (the “Divorce Action”). According to the Motion, the Divorce Action “does not attempt to affect property of the Debtor’s bankruptcy estate.” Notwithstanding this fact, Debtor alleges that the state court judge presiding over the Divorce Action “has requested that this Court enter an Order permitting the entry of a Decree of Divorce in the [D]ivorce [A]ction.” The Motion does not state why the state court judge is requiring such an order.

Discussion

Under § 362(a)(1) of the Bankruptcy Code, the filing of a petition “operates as a stay, applicable to all entities, of the commencement or continuation of . . . a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title.”³ This stay, while certainly broad, is not without exception. One of those exceptions applies directly to divorce proceedings:

² See Docket No. 25.

³ § 362(a)(1).

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(2) under subsection (a)--

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) *for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate;* or

(v) regarding domestic violence.⁴

This section was amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to explicitly state that proceedings to dissolve a marriage are outside the scope of the automatic stay. As one treatise has put it: “The revision of section 362(b)(2) clarifies the principle that bankruptcy should not interfere with domestic relations disputes that do not have an adverse impact on the bankruptcy estate.”⁵

In the Application, the Debtor expressly states that there are no issues affecting the property of the Debtor’s bankruptcy estate. The conclusion is inescapable that the comfort order which Debtor and the state court judge seek is unnecessary. Dissolution of marriage is simply not subject

⁴ § 362(b)(2)(A) (emphasis added).

⁵ 3 COLLIER ON BANKRUPTCY ¶ 362.05[2], at 362-52.1 (15th ed. rev., Alan N. Resnick & Henry J. Sommer eds., 2006).

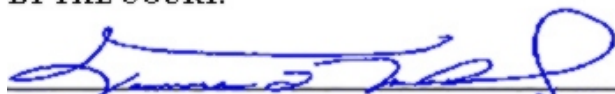
to the automatic stay.⁶ The state court is free to proceed with the Divorce Action. The Application is denied as moot.

For each of the reasons set forth above,

IT IS HEREBY ORDERED that the Application for Comfort Order filed by Christopher B. Markle, Debtor herein, be, and the same hereby is, denied as moot.

Dated this 6th day of March, 2006.

BY THE COURT:



TERRENCE L. MICHAEL, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

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⁶ This Order is being placed upon the Court's website to provide easy access to the same to counsel, state courts, and individuals who may be interested in the topic. It is hoped that the Order will clarify this issue, and eliminate the perceived need for pleadings such as the Application.

CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2006, I mailed by first-class United States mail a true and correct copy of the foregoing Order to the parties listed below:

CHRIS BLAKE MARKLE
10407 N 114TH E AVE
OWASSO OK 74055

TAMARA D. PITTS
BRICE, VANDER LINDEN & WERNICK, PC
PO BOX 829009
DALLAS TX 75382-9009

A handwritten signature in cursive script that reads "Jamie Phelps". The signature is written in black ink and is positioned above a horizontal line.