

Automatic Stay
Collateral Estoppel
Contempt
11 USC § 362
11 USC § 522(f)

O'Brien v. Nachtigal et al, Civ. No 93-179-FR,
Adv No. 91-3547-S
In re O'Brien, Case No. 391-35908-S7

4/14/93 J. Frye aff'g DDS

The district court affirmed the bankruptcy court's judgment denying the debtor's request for a judgment for willful violation of the automatic stay and to avoid his ex wife's judgment lien as impairing his homestead exemption.

The state circuit court held a hearing and found the debtor in contempt of the court for failing to execute a mortgage in favor of his former wife as part of a dissolution judgment. The debtor sued the state court judge, his ex wife and her lawyer for wilful violation of the automatic stay because he appeared at the contempt hearing and informed the defendants that he had filed a bankruptcy petition that morning.

Relying on a Ninth Circuit case, the district court held that contempt proceedings arising out of the disobedience of a state court order are not stayed when the order which was disobeyed was made prior to the filing of the bankruptcy petition.

Collateral estoppel prevented the debtor from relitigating the issue of the value of his remainder interest in real property when the state court had recently valued the property for the divorce. Based on the value, Judge Frye concluded that the lien did not

impair the debtor's homestead rights to the extent that the value exceeded the homestead exemption.

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PORTLAND, OREGON

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DISTRICT OF OREGON
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IN THE UNITED STATES DISTRICT COURT _____ DEPUTY

FOR THE DISTRICT OF OREGON

In re
PATRICK S. O'BRIEN,
Debtor.

Case No. 391-35908-S7

PATRICK S. O'BRIEN,
Plaintiff-Appellant,
v.

Adversary Proceeding
Case No. 91-3547-S

Civil No. 93-179-FR

HON. KATHLEEN B. NACHTIGAL,
JOHN H. HEALD, KATHERINE J.
O'BRIEN,
Defendants-Appellees.

O P I N I O N

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4-29-93
Joseph M. Cinnamon, Clerk
Deputy

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1 FRYE, Judge:

2 The matter before the court is the appeal of Patrick S.
3 O'Brien from a decision of the United States Bankruptcy Court
4 for the District of Oregon.

5 **BACKGROUND**

6 On November 21, 1990, defendant-appellee Katherine J.
7 O'Brien filed a petition for the dissolution of her marriage
8 to plaintiff-appellant, Patrick S. O'Brien, in the Circuit
9 Court of the State of Oregon for the County of Multnomah.
10 Katherine O'Brien was represented in this dissolution of mar-
11 riage proceeding by defendant-appellee John H. Heald. At
12 the time the petition for the dissolution of marriage was
13 filed, Patrick O'Brien owned a remainder interest, and his
14 mother owned a life estate, in real property located in the
15 City of Portland. In the dissolution of marriage proceeding,
16 Patrick O'Brien argued to the court that there was no monetary
17 value to his remainder interest in the real property.

18 On July 17, 1991, a decree and judgment of dissolution
19 of marriage was entered. As part of the judgment, the court
20 determined that the value of Patrick O'Brien's remainder
21 interest in the property was \$27,000.00. The court ordered
22 Patrick O'Brien to execute mortgages in favor of Katherine
23 O'Brien on the property in order to secure the judgment it
24 had awarded in favor of Katherine O'Brien and against Patrick
25 O'Brien.

26 Patrick O'Brien refused to execute the mortgages, and

1 on August 6, 1991, Katherine O'Brien obtained an order of the
2 court requiring Patrick O'Brien to show cause why he should
3 not be held in contempt of court for failing to execute the
4 mortgages as ordered by the court. On August 28, 1991, a
5 hearing was held before the Honorable Kathleen B. Nachtigal,
6 Circuit Court Judge for the County of Multnomah. Patrick
7 O'Brien appeared pro se. Judge Nachtigal informed him that
8 he faced a jail sentence or a fine in the contempt of court
9 proceeding and continued the hearing to give him an oppor-
10 tunity to secure counsel or to execute the mortgages.

11 On September 10, 1991, Patrick O'Brien filed a petition
12 in the United States Bankruptcy Court for the District of
13 Oregon. In the petition, Patrick O'Brien listed a remainder
14 interest in the property, claimed a \$15,000.00 homestead
15 exemption as to the property, and listed the value of the
16 property as "0.00."

17 On September 11, 1991, a hearing was held before Judge
18 Nachtigal to allow Patrick O'Brien to show cause why he
19 should not be held in contempt of court for failing to exe-
20 cute the mortgages. At the hearing, counsel for Patrick
21 O'Brien informed Judge Nachtigal and Heald of the bankruptcy
22 petition. Judge Nachtigal proceeded with the hearing and
23 found Patrick O'Brien in contempt of court for failing to
24 execute the mortgages.

25 In November of 1991, Patrick O'Brien filed an adversary
26 proceeding in the bankruptcy court against Katherine O'Brien,

1 Heald, and Judge Nachtigal. Patrick O'Brien sought an order
2 of the bankruptcy court enjoining Judge Nachtigal from violat-
3 ing the automatic stay of the bankruptcy court and vacating
4 the order of contempt entered by Judge Nachtigal at the show
5 cause hearing on September 11, 1991. He also sought damages.

6 On May 14, 1992, the matter came before the Honorable
7 Donal D. Sullivan, United States Bankruptcy Judge, on the
8 cross-motions of the parties for summary judgment. Judge
9 Sullivan ruled that the contempt proceeding which had been
10 held before Judge Nachtigal was an effort on the part of
11 Katherine O'Brien to collect on a property settlement reached
12 prior to the filing of the bankruptcy petition and, as such,
13 was a violation of the automatic stay of the bankruptcy court.
14 Judge Sullivan found, however, that the violation was not
15 willful and, in the alternative, that Patrick O'Brien had
16 suffered no damages as a result of the hearing.

17 On May 21, 1992, Patrick O'Brien filed a supplemental
18 complaint in the bankruptcy court seeking to avoid the pro-
19 perty award to Katherine O'Brien in the divorce decree on the
20 ground that the property award interfered with his homestead
21 rights in the property in violation of 11 U.S.C. § 522(f). On
22 September 1, 1992, after further briefing, this matter came
23 before Judge Sullivan. Judge Sullivan ruled that the judgment
24 lien of Katherine O'Brien did not impair the homestead rights
25 of Patrick O'Brien in the property and was, therefore, not
26 avoidable pursuant to 11 U.S.C. § 522.

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CONTENTIONS OF THE PARTIES

Patrick O'Brien contends that the bankruptcy court erred in finding that Judge Nachtigal did not willfully violate the automatic stay of the bankruptcy court. He seeks punitive damages and attorney fees for the violation. The defendants-appellees contend that there was no violation of the automatic stay. Alternatively, the defendants-appellees contend that if a violation of the automatic stay occurred, it was not willful.

Patrick O'Brien also contends that the lien of Katherine O'Brien impairs his homestead rights in the property and must, therefore, be avoided. The defendants-appellees contend that the lien of Katherine O'Brien does not impair the homestead rights of Patrick O'Brien.

STANDARD OF REVIEW

This court acts as an appellate court over decisions of the bankruptcy court reviewing findings of fact under the clearly erroneous standard and reviewing conclusions of law de novo. Wright v. Holm (In re Holm), 931 F.2d 620, 622 (9th Cir. 1991); Daniels-Head & Assocs. v. William M. Mercer, Inc. (In re Daniels-Head & Assocs.), 819 F.2d 914, 918 (9th Cir. 1987).

ANALYSIS AND RULING

1. Violation of Automatic Stay

The first issue before the court is whether the hearing on the order to show cause held before Judge Nachtigal on

1 September 11, 1991 was a violation of the automatic stay of
2 the bankruptcy court.

3 The purpose of the hearing before Judge Nachtigal on
4 September 11, 1992 was to allow Patrick O'Brien to show cause
5 why he should not be held in contempt of court for failing to
6 execute the mortgages previously ordered by Judge Nachtigal.
7 At the hearing, Judge Nachtigal found Patrick O'Brien "in con-
8 tempt of the Court's order." O'Brien v. O'Brien, No. D9011-
9 69502, Transcript of Proceedings, p. 5, ln. 4 (filed as Exhi-
10 bit 2 to Excerpt of Record); see also id. at p. 7, lns. 15-20.
11 Judge Nachtigal ordered Patrick O'Brien to pay \$160.00 to the
12 State of Oregon, and \$375.00 to Katherine O'Brien for her
13 attorney fees. In this circuit, contempt proceedings arising
14 out of the disobedience of a state court order are not stayed
15 when the state court order which was disobeyed was made prior
16 to the filing of the petition in bankruptcy. David v. Hooker,
17 Ltd., 560 F.2d 412, 418 (9th Cir. 1977). Judge Nachtigal was
18 correct when she noted that Patrick O'Brien "can't get himself
19 in contempt, get the case continued, then go over there and
20 file bankruptcy to avoid contempt of this court. It doesn't
21 work that way." O'Brien v. O'Brien, No. D9011-69502, Trans-
22 cript of Proceedings, p. 11, lns. 2-5 (filed as Exhibit 2 to
23 Excerpt of Record); see also id. at p. 7, lns. 15-20.¹

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25 ¹ Having found that the September 11, 1991 hearing was not
26 held in violation of the automatic stay, the court does not
reach the issue of damages.

1 2. Lien Avoidance

2 Patrick O'Brien contends that the judgment lien on the
3 property held by Katherine O'Brien must be avoided because it
4 impairs his \$15,000.00 homestead exemption. Katherine O'Brien
5 contends that her lien on the property is not avoidable under
6 11 U.S.C. § 522(f), which provides:

7 (f) Notwithstanding any waiver of exemptions,
8 the debtor may avoid the fixing of a lien on an
9 interest of the debtor in property to the extent
10 that such lien impairs an exemption to which the
debtor would have been entitled under subsection
(b) of this section, if such lien is --

11 (1) a judicial lien; . . .

12 The parties dispute the value of the property. Patrick
13 O'Brien contends that because Katherine O'Brien never objected
14 to the value he placed on the property, she has waived her
15 right to contest the issue of valuation. Katherine O'Brien
16 contends that the doctrine of collateral estoppel required
17 the bankruptcy court to value the property at \$27,000.00, the
18 amount determined by Judge Nachtigal.

19 The doctrine of collateral estoppel required the bank-
20 ruptcy court to value the property at \$27,000.00. Cf. Grogan
21 v. Garner, 111 S.Ct. 654, 658 n.11 (1991). The bankruptcy
22 court correctly accepted the value of the property as deter-
23 mined by the court in the dissolution proceeding.

24 This court concludes that the lien of Katherine O'Brien
25 does not impair the homestead rights of Patrick O'Brien to the
26 extent that the value of the property as determined by Judge


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Nachtigal exceeds the homestead exemption of Patrick O'Brien.
Farrey v. Sanderfoot, 111 S.Ct. 1825 (1991); Yerrington v.
Yerrington (In re Yerrington), 144 B.R. 96 (Bankr. 9th Cir.
1992).

CONCLUSION

The decision of the bankruptcy court is affirmed.

DATED this 14 day of April, 1993.


HELEN J. FRYE
United States District Judge