

Dissolution of Marriage
Automatic Stay

Wayne Rivera, Case No. 04-61370-fra7

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Unpublished

Debtor filed chapter 7 bankruptcy and Debtor's wife thereafter filed to dissolve the parties' marriage in the Circuit Court for Marion County. The parties have a residence, three children, and both are self-employed. When the bankruptcy court learned of the dissolution proceeding, it proposed, in open court, to enter an order modifying the stay to allow the matter to proceed. The Trustee objected that the petition for dissolution violated the automatic stay and was therefore void. The matter was taken under advisement.

The court discussed the interrelatedness of the Circuit Court's function in determining all the elements involved in a dissolution of marriage, including the placement of children, support, and the distribution of property, stating that none can be considered in isolation.

The court stated that a dissolution proceeding is not a proceeding by a creditor versus a debtor, but a distribution of assets according to applicable state law. This does not in itself, the court said, violate the automatic stay. What would violate the automatic stay is entry of a judgment which purports to distribute property of the estate. The Circuit Court, however cannot make a determination regarding issues of custody and support without the ability to effect a distribution of property. Moreover, there is a well-settled doctrine that federal courts should not involve themselves in domestic relations cases.

Accordingly, the court entered an order modifying the automatic stay to allow the Circuit Court to proceed with the dissolution proceeding and to determine any legal issues arising between the parties, or either party and the Trustee, concerning the parties' respective property rights. Entry of the order was conditioned on the right of the Trustee to intervene to protect the estate's interest and to be served with all pleadings and other filings in the case.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
WAYNE S. RIVERA,) 04-61370-fra7
)
Debtor.) MEMORANDUM OPINION

The Court must balance, to the extent they compete, the requirements of federal bankruptcy law providing for an automatic stay of creditors' collection activities, and Oregon law governing the dissolution of marriages. The Court finds that, to the extent there is a conflict, the divorce proceedings should have precedence, and for that reason will order that the automatic stay be modified in this case to permit a dissolution case to proceed.

I. FACTS

The facts in this case are not complicated: on February 27, 2004, Debtor filed a petition for relief under Chapter 7 of the Bankruptcy Code. Thereafter, the Debtor's wife filed a petition in the Circuit Court for Marion County to dissolve the parties' marriage. According to the schedules filed in the bankruptcy, the

1 parties have a residence, and three children. Each is said to be
2 self-employed, with the wife's income somewhat higher than the
3 Debtor's.

4 When the Court learned that the dissolution petition had been
5 filed, it proposed, in open court, to enter an order modifying the
6 stay. The Trustee objected. The court then entered an order to
7 show cause why the proposed order should not be entered, and a
8 hearing was held on August 26, 2004.

9 II. APPLICABLE LAW

10 A. 11 U.S.C. § 362

11 Bankruptcy Code § 362 provides that a petition for relief
12 operates as a stay of:

13 (1) the commencement or continuation, including
14 the issuance or employment of process, of a judicial,
15 administrative, or other action or proceeding against
16 the debtor that was or could have been commenced
before the commencement of the case under this title,
or to recover a claim against the debtor that arose
before the commencement of the case under this title;

17 * * *

18 (3) any act to obtain possession of property of
19 the estate or of property from the estate or to
exercise control over property of the estate;

20 (4) any act to create, perfect, or enforce any
21 lien against property of the estate;

22 (5) any act to create, perfect, or enforce
23 against property of the debtor any lien to the extent
that such lien secures a claim that arose before the
commencement of the case under this title;

24 (6) any act to collect, assess, or recover a
25 claim against the debtor that arose before the
26 commencement of the case under this title;

1 Section 362 (b) excludes from the automatic stay commencement
2 or continuation of an action to establish paternity or to establish
3 or modify an order for alimony, maintenance or support, or the
4 collection of alimony, maintenance or support from property that is
5 not property of the estate.

6 B. Oregon Revised Statutes Chapter 107

7 Statutes governing the dissolution of marriages in Oregon are
8 set out in Oregon Revised Statutes Ch. 107. Dissolution proceedings
9 are subject to the jurisdiction of the Circuit Court, which is
10 Oregon's only trial level court. The court is charged with
11 dissolving the marriage, providing for the future care and custody
12 of the parties' children, awards of child support and spousal
13 support and, where appropriate, division of the parties' property.

14 Respecting property of the parties, ORS 107.105 provides, in
15 pertinent part:

16 (1) Whenever the court renders a judgment of marital
17 annulment, dissolution, or separation, the court may
provide in the judgment:

 * * *

18 (f) For the division or other disposition between the
19 parties of the real or personal property, or both, of
20 either or both of the parties as may be just and
proper in all the circumstances....The court shall
21 consider the contribution of a spouse as a homemaker
as a contribution to the acquisition of marital
22 assets. There is a rebuttable presumption that both
spouses have contributed equally to the acquisition of
23 property during the marriage, whether such property is
jointly or separately held. *Subsequent to the filing*
24 *of a petition for annulment or dissolution of marriage*
or separation, the rights of the parties in the
25 *marital assets shall be considered a species of*
coownership, and a transfer of marital assets under a
26 judgment of annulment or dissolution of marriage or of

1 separation...shall be considered a partitioning of
2 jointly owned property. [emphasis added]

3 In order to make its determination, the Circuit Court must
4 weigh a number of factors, and must consider the effect of each
5 element of the dissolution in relation to others made in the decree
6 of dissolution. For example, in assessing the need for spousal
7 support, the court must consider other financial provisions of the
8 judgment of dissolution: none can be considered in isolation. ORS
9 107.105(1)(d); Matter of the Marriage of Smith & Smith, 168 Or.App.
10 349, 354, 7 P.3d 559 (2000); Matter of the Marriage of Vanwinkle &
11 Vanwinkle, 169 Or.App. 1030, 10 P.3d 306 (2000); Matter of the
12 Marriage of Grove & Grove, 280 Or. 341, 571 P.2d 477 (1977). The
13 placement of minor children may affect the distribution of property.
14 Specifically, Oregon courts generally will award to the spouse
15 awarded custody of minor children the parties' residence, subject to
16 an appropriate co-tenancy or offsetting judgment. Marriage of
17 Vanderzanden, 51 Or. App. 757, 627 P.2d 18 (1981).

18 III. DISCUSSION

19 The Trustee maintains that the petition for dissolution
20 violates the automatic stay, and is therefore void and of no effect.
21 It is clear that the automatic stay does not prevent dissolution of
22 a marriage, or provisions for custody or support of children. What
23 is less clear is the effect of the dissolution petition on the
24 parties' property, and whether the subsequent treatment of the
25 Debtor's (and thus the estate's) interest in property as a "species
26 of joint tenancy" is prohibited by the automatic stay.

1 The initiation of a dissolution of marriage proceeding under
2 Oregon law does not, by itself, violate any of the provisions of
3 Code § 362(a), with the possible exception of subsection (3). The
4 divorcing partner is not, when seeking a distribution of property,
5 enforcing a claim. A dissolution is not a proceeding by a creditor
6 versus debtor, but a distribution of assets according to applicable
7 law. ORS 107.105(f). It follows that the dissolution proceeding
8 should not be deemed stayed as, for example, "an act to collect,
9 assess or recover a claim against the debtor that arose before the
10 commencement of the case...."

11 If the commencement of a dissolution case somehow alters the
12 property rights of the debtor (and thus the estate) at the time the
13 dissolution petition is filed, it might be said to be a violation of
14 the stay to the extent it is "an act to obtain possession of
15 property of the estate or of property from the estate or to exercise
16 control over property of the estate." § 362(a)(3). However, ORS
17 107.105 does not actually alter any pre-existing rights; what it
18 does is establish an analytical framework for implementing rights
19 that existed from the outset of the marriage. By providing that
20 "the rights of the parties in the marital assets shall be considered
21 a species of coownership," the legislature is not mandating a change
22 in the rights of the parties, but directing the Circuit Court to
23 carry out the state's policy that marital assets be equitably
24 divided. In other words, commencement of the dissolution proceeding

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1 does not modify the property rights of either party, or create new
2 ones: it simply puts into play the right of a spouse to an equitable
3 distribution in the event the marriage fails.¹ This does not, by
4 itself, violate § 362.

5 Of course, what does violate the automatic stay is entry of a
6 judgment which actually purports to distribute property of the
7 estate. That being the case, simultaneous proceedings in bankruptcy
8 and to dissolve the marriage of a debtor results in gridlock. The
9 Circuit Court is prohibited from distributing marital property, but
10 is unable to make provision for support or custody without
11 considering property division. The trustee in bankruptcy cannot
12 administer the property because it remains subject to the
13 (undetermined) rights of the non-debtor spouse.

14 The Trustee believes that the divorce should be allowed to
15 proceed without consideration of property distribution, which should
16 be handled by the Bankruptcy Court. This is problematical in many
17 respects:

18 First, as indicated, the Circuit Court must take property
19 distribution into account, and therefore necessarily would have to
20 wait until the Bankruptcy Court effects a distribution of the
21 marital property. This in turn means that the Bankruptcy Court will
22 have an undue influence on issues of custody and support. Moreover,
23 the Bankruptcy Court may be hard pressed to distribute the property
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25 ¹ A marriage may be dissolved in Oregon when “irreconcilable differences between the
26 parties have caused the irremediable breakdown of the marriage.” ORS 107.025.

1 if it is required by state law to consider the custody of children
2 in determining the fate of a marital residence.

3 Second, there is a well settled doctrine that federal courts
4 should not involve themselves in domestic relations cases. In re
5 Halub, 25 B.R. 617 (Bankr. C.D. Cal. 1982). The case law does not
6 distinguish between various aspects of domestic relations law, and
7 it must be presumed that federal courts have determined that they
8 shall not participate in any aspect of it.

9 State courts, by contrast, have developed particular skills
10 and rules allowing them to efficiently carry out their duties under
11 Chapter 107. Note, in particular, provisions in the Oregon Uniform
12 Trial Court Rules providing for documentation of the parties'
13 property, in order for the Circuit Court at trial to make an
14 efficient determination of how property should be distributed. UTCR
15 Ch. 8.

16 The Trustee voiced a concern at oral argument that the Debtor
17 and his wife might agree to a collusive marital settlement agreement
18 or decree of dissolution, awarding all of the marital property to
19 her to the detriment of the Debtor/husband's creditors. The Trustee
20 presents no evidence of the parties' intention to do this. In any
21 case, relief from the automatic stay can be fashioned to condition
22 the parties' right to proceed in the dissolution on assuring the
23 Trustee's right to protect the interests of creditors. There is no
24 reason to believe that the Circuit Court would not give creditors
25 whatever consideration the law requires, as would this court. The
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1 point is that the law governing such determinations is the same in
2 either forum.

3 Accordingly, the order the Court will enter requires that any
4 proposed settlement be disclosed to the Trustee before it is
5 submitted to the Circuit Court. It further provides that relief
6 from the automatic stay, and the Circuit Court's authority to enter
7 a judgment, is specifically conditioned on the Trustee's right to
8 intervene in the dissolution proceeding to protect the interests of
9 creditors.

10 The Trustee suggests that the Bankruptcy Court is the
11 appropriate forum for determining property issues, because it is
12 more convenient for creditors, and, perhaps, more likely to take the
13 interests of creditors into account. However, the interests of the
14 parties in property, and hence the interests of the estate, are
15 governed by state law. This court is not aware of any federal
16 doctrine which says that the interests of creditors take precedence
17 over the interests of the debtor's family or dependents. When the
18 marriage of a debtor in bankruptcy is to be dissolved, Oregon law
19 requires that the debtor's and his spouse's property be equitably
20 divided, and the Trustee takes subject to that law. It follows
21 that, at least in the absence of proof that the petition for
22 dissolution is a sham, the parties should be allowed to complete the
23 dissolution of their marriage, including the distribution of marital
24 property, before the Trustee proceeds to administer assets of the
25 estate.

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