

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In re: ) Case No. 03-15361  
)  
JEFFREY M. TIPPIE, ) Chapter 7  
)  
Debtor. ) Judge Arthur I. Harris

ORDER DENYING, WITHOUT PREJUDICE, DEBTOR'S MOTION FOR AN  
ORDER TO SHOW CAUSE (DOCKET #33)

This case is currently before the Court on the motion of the debtor, Jeffrey Tippie, for an order for Mary Patnik to appear and show cause why she should not be held in contempt (Docket #33). The debtor contends that Ms. Patnik's own efforts to reinstate separate contempt proceedings against the debtor in a divorce action in the Geauga County Court of Common Pleas is a violation of 11 U.S.C. § 524 and the order of discharge that the debtor received on August 7, 2003. The Court heard oral argument on the debtor's motion on January 27, 2004, and again on February 3, 2004. For the reasons stated below and for the reasons stated in open court on February 3, 2004, the debtor's motion is denied, without prejudice.

According to the debtor's current motion, on February 6, 2003, the state court issued an order granting the parties a divorce and awarding specific property to Ms. Patnik. The order also required the debtor to pay various debts. On March 10, 2003, Ms. Patnik filed a motion for an order to show cause for the debtor's noncompliance with the divorce order. A hearing was scheduled for April

30, 2003; however, on April 25, 2003, the debtor filed this petition under Chapter 7, and on May 6, 2003, the state court issued an order staying the divorce proceedings. On August 7, 2003, the debtor received his Chapter 7 discharge. On August 14, 2003, Ms. Patnik filed a motion for relief from stay (Docket #21) in order to proceed in state court with efforts to recover the specific items of property awarded her in the divorce order dated February 6, 2003. On October 7, 2003, this Court heard oral argument on Ms. Patnik's motion, and in an order dated October 21, 2003, (Docket #30) granted Patnik's motion for relief from stay. On November 25, 2003, Ms. Patnik moved in state court to reset her March 2003 motion to show cause, which the state court scheduled for hearing on February 5, 2004. That hearing has apparently been rescheduled for March 8, 2004.

On February 3, 2004, debtor's attorney indicated that some of the specific items that were a part of the state contempt proceedings and Ms. Patnik's motion for relief from stay have now been turned over to Ms. Patnik, including two certificates of title and a Labrador retriever, albeit only after Ms. Patnik filed her motion on November 25, 2003, to reset the show cause proceedings. In addition, Ms. Patnik's attorney indicated that the only relief that Ms. Patnik now seeks through the show cause motion in state court is the turnover of four remaining items: (1) a computer; (2) gold and silver bars and coins; (3) silverware; and

(4) keys to a Jaguar and a Harley-Davidson motorcycle; plus the award of postpetition attorney's fees. Ms. Patnik no longer seeks enforcement of the portions of the state court order requiring the debtor to pay various debts, which she concedes are now discharged.

Debtor's attorney asserts that the problem with Ms. Patnik's efforts to seek turnover of the remaining items is that the debtor does not possess the remaining items, thereby making the state proceedings the collection of a discharged debt in violation of the debtor's discharge and 11 U.S.C. § 524. However, no court has yet determined that the debtor does not possess the items at issue, and debtor's counsel concedes that the state court has deemed not credible the debtor's assertions that he no longer possesses these items.

This Court believes that the pursuit of contempt proceedings to compel the debtor to turn over specific property, which does not belong to the debtor, but instead belongs to Ms. Patnik pursuant to the state court order of February 6, 2003, is not an action to recover a debt *as a personal liability of the debtor*. Rather, the action is akin to a secured creditor's action to repossess its collateral or to foreclose on the debtor's real property to recover the value of its security interest.

Under 11 U.S.C. § 524(a):

A discharge in a case under this title --

. . . .

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor . . . .

Clearly, if the debtor is still in possession of property that belongs to Ms. Patnik, then the obligation to turn that property over is not discharged. *See In re McCafferty*, 96 F.3d 192 (6th Cir. 1996)(divorce court's award of debtor's retirement benefits to debtor's ex-spouse was not property of debtor's estate and was not affected by a discharge).<sup>1</sup> While the situation might be different if the debtor's obligation to Ms. Patnik were reduced to a civil money judgment -- *e.g.*, if the state court had found that the specific items no longer exist -- that is not the current situation. *Cf. Ohio v. Kovacs*, 469 U.S. 274 (1985)(cleanup order that had been converted into an obligation to pay money was dischargeable in bankruptcy).<sup>2</sup>

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<sup>1</sup> *See also Erb v. Erb*, 75 Ohio St.3d 18, 661 N.E.2d 175 (1996)(wife's ownership interest in husband's pension would not be affected by a discharge and husband "would remain subject to the contempt powers of the domestic relations court"), *cited with approval in In re McCafferty*, 96 F.3d at 199.

<sup>2</sup> Moreover, in *Kovacs*, the Supreme Court also cautioned that it was not suggesting that Kovacs's discharge would shield him either from criminal prosecution for having violated the environmental laws of Ohio or from criminal contempt for not performing his obligations under the cleanup order prior to bankruptcy. 469 U.S. at 284.

Accordingly, for the reasons stated below and for the reasons stated in open court on February 3, 2004, the motion of the debtor, Jeffrey Tippie, for an order for Mary Patnik to appear and show cause why she should not be held in contempt (Docket #33) is denied, without prejudice.

IT IS SO ORDERED.

/s/ Arthur I. Harris 02/04/2004  
Arthur I. Harris  
United States Bankruptcy Judge